SUPREME COURT OF THE UNITED STATES.

No. ~~199~~. 86.

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ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, GEORGE D. KELLOGG, AND WILLIAM B. SNOWHOOK, IMPLEADED WITH CHARLES N. PINE, BENJAMIN F. PINE, AND BRECKENRIDGE F. BLACKBURN, PLAINTIFFS IN ERROR.

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

1 How 104

SUPREME COURT OF THE UNITED STATES.

No. 199.

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INDEX.

	Original.	Print.
Pleas	1	1
Summons	3	1
Declaration	6	2
Bond	10	4
Defendant's plea	12	6
Replication	16	7
Order of court	28	11
Verdict	31	12
Judgment	32	13
Bill of exceptions	34	13
Copy of writ of error	229	115
Appeal bond	231	116
Copy of citation and service	233	117
Clerk's certificate	236	118
Assignment of errors	237	118

Pleas in the circuit court of the United States for the north-
1 ern district of Illinois, before the Hon. Thomas Drummond, judge of the district court for said district, and on Saturday, the fourteenth day of December, in the year of our Lord one thousand eight hundred sixty-one, and of our independence of the United States the eighty-sixth year.

WM. H. BRADLEY, *Cle'k.*

"THE UNITED STATES OF AMERICA
v.
ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, Iram Nye, George D. Kellogg, and William B. Snowhook, impleaded with Charles W. Pine, Benjamin F. Pine and Breckenridge F. Blackburn. } Debt.

"Be it remembered, that on the fourth day of February, in
2 the year of our Lord one thousand eight hundred and sixty-one, said plaintiff, by Henry S. Fitch, the attorney for the United States for the northern district of Illinois, came into the clerk's office of said court aforesaid, and filed his precepil against said defendants, in the words and figures following, to wit :

"UNITED STATES
v.
CHARLES N. PINE, *et al.*

"The clerk will please issue summons in the above-entitled cause, returnable March term, 1861.

"H. S. FITCH,
"*U. S. Dis't Att'y.*

"Endorsed: Filed Feb'y 4, 1861.

"WM. H. BRADLEY, *Cl'k.*"

And thereupon a summons issued in the words and figures following, to wit :

"CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

"The United States of America to the marshal of the northern
3 district of Illinois, greeting :

"We command you that you summon Charles N. Pine, Benjamin F. Pine, Isaac Cook, Richard J. Hamilton, (since dec'd,) Thomas Hoyne, Breckenridge F. Blackburn, Ezekiel S. Smith, Iram Nye, George D. Kellogg, Edward M. Dewey and William B. Snowhook, if they shall be found in your district, to be and appear before our judges of our

circuit court of the United States for the northern district of Illinois, at the March term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto the United States of America in a plea of debt for twenty thousand dollars, and for the detention of said debt to their damage, as they allege, of twenty thousand dollars, and have you then and there this writ.

"[L. S.] Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago,
4 aforesaid, this fourth day of February, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the 85th year.

"WM. H. BRADLEY, *Clerk.*

"Endorsed: One of the defendants being the marshal, Frederick W. Cole is authorized to serve the within writ.

Feb. 5, 1861. "THOMAS DRUMMOND."

"I hereby certify that I did, on the 5th day of Feb., 1861, serve this writ on William B. Snowhook and Edward M. Dewey, by reading the same to them, and on Thomas Hoyne, Isaac Cook, and George D. Kellogg, by reading the same to them, the 6th day of February, 1861, and on Iram Nye, by reading the same to him on the 7th day of February, 1861, and on Ezekiel S. Smith, by reading the same to him the 9th day of February, 1861. Charles N. Pine, Benjamin F. Pine, and Breckenridge F. Blackburn I could not find; and I further certify that Richard J. Hamilton departed this life in the month of *of*
5 December, 1860.

"FRED. W. COLE."

Endorsed: Filed Feb. 9, 1861.

WM. H. BRADLEY, *Clk.*

6 And on the said 4th day of Febauary, A. D. 1861, the said plaintiff, by its attorney, filed in said clerk's office its declaration against said defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois:

Of December term, A. D. 1860, of the circuit court of the United States for the northern district of Illinois.

THE UNITED STATES OF AMERICA *vs.* CHARLES N. PINE, BENJAMIN F. PINE, ISAAC COOK, Richard J. Hamilton (since died,) Thomas Hoyne, Breckinridge F. Blackburn, Ezekiel S. Smith, Iram Nye, George D. Kellogg, Edward M. Dewey, William B. Snowhook.	Debt.

The United States of America, plaintiff in this suit, by Henry S. Fitch, their attorney, complain of Charles N. Pine, Benjamin F. Pine, Isaac Cook, Richard J. Hamilton (since died,) Thomas
7 Hoyne, Breckinridge F. Blackburn, Ezekiel S. Smith, Iram

Nye, George D. Kellogg, Edward M. Dewey, and William B. Snowhook, who have been duly summoned of a plea that they render unto the said plaintiffs the sum of twenty thousand dollars, which they owe to and unjustly detain from said plaintiffs.

For that whereas the said defendants heretofore, to wit, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, to wit, at Chicago, in the State and district aforesaid, and within the jurisdiction of this court, by their certain writing obligatory, sealed with their seals, and now in the court, the date whereof is the day and year aforesaid by the names, abbreviations, contractions, and descriptions of Charles N. Pine, Benjamin F. Pine, Isaac Cook, Richard J. Hamilton (since died,) Thomas Hoyne, Breckinridge F. Blackburn, E. S. Smith, Iram Nye, George D. Kellogg, E. M. Dewey, and William B. Snowhook, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of twenty thousand dollars, for the payment of which, well and truly to be made, they, the said defendants, did, in and by the said writing obligatory, bind themselves, their heirs, and each of their heirs, executors, and administrators, firmly by the said writing obligatory.

And the said plaintiffs, according to the statutes in such case made and provided, say that the said writing was and is subject to a certain condition there and under written, whereby, after reciting to the effect as follows, that is to say, that the said Charles N. Pine has been appointed by the President of the United States marshal of the United States for the northern district of Illinois, it was and is provided, that if the said Charles N. Pine should faithfully perform, by himself and his deputies, all the duties of marshal of the United
8 States for the northern district of Illinois, then this obligation was to be void; otherwise to remain in full force and virtue, as, by the said writing obligatory, and the conditions thereof, will more fully appear at large.

Nevertheless, the said plaintiffs in fact say, that after the making of said writing obligatory, and before the commencement of this suit, to wit, at Chicago, in the State and district aforesaid, and within the jurisdiction of this court, the said Charles N. Pine did, not by himself or his deputies, faithfully perform all the duties of his said office of marshal in this, to wit, that there came into the hands of said Charles N. Pine, as marshal aforesaid, a large sum of money, to wit, the sum of twenty thousand dollars belonging to the said plaintiffs which he had received as such marshal, which said sum of money, as received by him as aforesaid, it was the duty of the said Charles N. Pine, marshal as aforesaid, according to the statute in such case made and provided, to account for and pay over to said plaintiffs; yet the said Charles N. Pine did not, nor would he, though often requested so to do, pay to said plaintiffs the aforesaid sum of money so belonging to said plaintiffs as aforesaid, or any part thereof, but he has hitherto wholly refused to pay the same, or any part thereof, to the said plaintiffs, whereby the said plaintiffs have sustained damages to a large amount, to wit, to the amount of twenty thousand dollars.

And for assigning a further breach of the condition of the said writing obligatory, the said plaintiffs say, that after the making of the same, to wit, on the 28th day of February, in the year of our Lord one thousand eight hundred and fifty-nine, at Chicago, in the State and district aforesaid, the said Charles N. Pine did not, by
9 himself or his deputies, faithfully perform all the duties of his said office of marshal, in this, that the said Charles N. Pine, as marshal aforesaid, by him or his deputies, receive and collect a large sum of money belonging to the said plaintiffs as the fees and emoluments of the said office of marshal aforesaid, over and above the compensation allowed him as said marshal, by the statute in such case made and provided, to wit, the sum of twenty thousand dollars, which it was the duty, according to law, of the said Charles N. Pine, as marshal aforesaid, to pay over and account to said plaintiffs.

Yet the said plaintiffs say that the said Charles N. Pine, marshal as aforesaid, did not, nor would he, by himself or his deputies, pay to the said plaintiffs the said sum of money, or any part thereof, but has hitherto refused and still refuses so to do, whereby the said plaintiffs have sustained damages to a large amount, to wit, twenty thousand dollars, at the place aforesaid.

Therefore they bring suit, &c.

H. S. FITCH, *U. S Att'y.*

10 Know all men by these presents, that we, Charles N. Pine, as principal, and Richard J. Hamilton, Benjamin F. Pine, Isaac Cook, Thomas Hoyne, Ezekiel S. Smith, Iram Nye, George D. Kellogg, Wm. B. Snowhook, Breckenridge F. Blackburne, and Edward M. Dewey, as sureties of the town of Chicago, in the State of Illinois, are held and firmly bound unto the United States of America, in the sum of twenty thousand dollars, lawful money of the said United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by the presents.

Signed with our hands and sealed with our seals this 28th day of February, 1859.

The condition of the above obligation is such, whereas the President of the United States hath, pursuant to law, appointed the said Charles N. Pine to be marshal of the United States for the northern district of Illinois, to have and to hold the same with all the rights, privileges, and emoluments thereunto lawfully appertaining for four years, from the fifteenth day of December, 1858, unless sooner removed therefrom, as, by a commission to him bearing date the fifteenth day of December, 1858, more fully appears. Now, if the said Charles

N. Pine, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue.

BENJ. F. PINE.	[SEAL.]
I. COOK.	[SEAL.]
THOS. HOYNE.	[SEAL.]
B. F. BLACKBURNE.	[SEAL.]
IRAM NYE.	[SEAL.]
GEO. D. KELLOGG.	[SEAL.]
E. M. DEWEY.	[SEAL.]
WM. B. SNOWHOOK.	[SEAL.]
CHARLES N. PINE.	[SEAL.]
RICH'D J. HAMILTON.	[SEAL.]
E. S. SMITH.	[SEAL.]

11 CHICAGO, *March* 2, 1859.

All the foregoing parties acknowledged the genuineness of their signatures to the above bond before me, except E. S. Smith, and I am satisfied, from my own knowledge and from evidence, that his signature is also genuine. I therefore approve the bond as sufficient.

THOMAS DRUMMOND,
U. S. Judge.

I, Charles N. Pine, do solemnly swear that I will faithfully execute all lawful precepts directed to the marshal of the northern district of Illinois under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal of the northern district of Illinois during my continuance in said office, and take only my lawful fees, and that I will support the Constitution of the United States. So help me God.

C. N. PINE.

Sworn to and subscribed before me, March 2d, 1859.

THOMAS DRUMMOND.

Endorsed: Filed March 2d, 1859.

WM. H. BRADLEY, *Clk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Wiilliam H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy of the bond and oath of office of Charles N. Pine, as marshal for the northern district of Illinois, as the same appears from the original thereof now on file in my office, and remaining of custody therein.

12 In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the city of Chicago, [SEAL.] this 2d day of February, A. D. 1861.

WM. H. BRADLEY, *Clk.*

Endorsed: Filed Feb'y 4, 1861.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 16th day of March, A. D. 1861, said defendants, Thomas Hoyne and William B. Snowhook, by their attorneys, Miller & Lewis, come and file their pleas, in the words and figures following, to wit:

Pleas of Hoyne and Snowhook.

Circuit court of the United States for the northern district of Illinois, of the March term, 1861.

THOMAS HOYNE and WILLIAM B. SNOWHOOK, impleaded with Charles N. Pine and others, survivors of Richard J. Hamilton, dec'd. *ads.* THE UNITED STATES OF AMERICA. } Debt.

13 And the said defendants, the said Thomas Hoyne and William B. Snowhook, impleaded, &c., by Miller and Lewis, their attorneys, come and defend the wrong and injury, when, &c., and say that the said supposed writing obligatary is not their deed, and of this they put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants, Thomas Hoyne and William B. Snowhook, crave oyer of the said supposed writing obligatory in the said declaration mentioned, and it is read to them, &c. They also crave oyer of the condition of the the said supposed writing obligatory, and it is read to them in these words:

"Whereas, the President of the United States hath, pursuant to law, appointed the said Charles N. Pine to be marshal of the United States for the northern dist. of Illinois, to have and to hold the same with all the rights, privileges, and emoluments thereunto lawfully appertaining, for four years from the fifteenth day of December, 1858, unless sooner removed therefrom, as, by a commission to him bearing date the fifteenth day of December, 1858, more fully

14 appears.

"Now if the said Charles N. Pine, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue."

Which being read and heard, the said defendants, Thomas Hoyne and William B. Snowhook, say, *actio non*, because they say that the said Charles N. Pine did, by himself and by his deputies, from time to time, and at all times after the making of the said writing obligatory and the said condition thereof, faithfully perform all the duties of the said office of marshal according to the tenor and effect, true intent and meaning of the said condition of the said writing obligatory. And this the said defendants, Thomas Hoyne and William B. Snowhook are ready to verify; therefore the said defendants, Thomas Hoyne and William B. Snowhook, pray judgment of the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

And for a further plea in this behalf, the said defendants, Thomas Hoyne and William B. Showhook, say, *actio non*, because they say

15 that the said Charles N. Pine did, from time to time, and at all times after the making of the said supposed writing obligatory, account for and pay over to the said plaintiff every and all sum and sums of money belonging to said plaintiffs, and received by him as such marshal, and did, from time to time, and at all times after the making of the said supposed writing obligatory, and the said condition thereof, well and truly account for and pay over to the said plaintiffs, every and all sum and sums of money belonging to the said plaintiffs, and which were received or collected by him and his deputies after the making of the said supposed writing obligatory, and the said condition thereof as the fees and emoluments of the said office of marshal over and above the compensation allowed him as said marshal by the statute in such case made and provided, according to the tenor and effect, true intent and meaning of the said supposed writing obligatory, and the condition thereof aforesaid. And this they, the said defendants, Thomas Hoyne and William B. Snow-
16 hook, pray may be inquired of by the company, &c.

MILLER & LEWIS,
Atty's for def'ts.
THO'S HOYNE and
WILLIAM B. SNOWHOOK.

Endorsed: Filed March 16, 1861.

W. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 9th day of July, A. D. 1861, comes the plaintiff by E. C. Larned, esq., attorney, and files the following replication, to wit:

Replication to second plea.

United States circuit court, July term, A. D. 1861.

UNITED STATES
v.
C. N. PINE, THO'S HOYNE, W. B. SNOWHOOK, *et al.* } D'bt on bond.

And now come the said plaintiffs by their attorney, E. C. Larned, and say that they ought not to be barred by reason of ought in the said def'ts second plea alleged, because they say that the said
17 defendant, C. N. Pine, did not, from time to time, and at all times after the making of said writing obligatory, account for and pay over to the said plaintiff every and all sum and sums of money belonging to said plaintiffs and received by him as such marshal, and did not, from time to time, and at all times after the making of the said writing obligatory, well and truly account for and pay over to the said plaintiffs every and all sum and sums of money belonging to the said plaintiffs, and which were received or collected by him or his deputies after the making of the said supposed writing obligatory as the fees and emoluments of the said office of marshal, over and above the compensation allowed him as such marshal, by the statute in such case made and provided, according to the tenor and effect of said

bond, and the said condition thereof, and of this they put themselves upon the country:

By their attorney:

E. C. LARNED, *U. S. Att'y.*

Endorsed: Filed July 9, 1861.

WM. H. BRADLEY, *Cl'k.*

18 And afterwards, to wit, on the 22d day of July, A. D. 1861, the said defendants, Thomas Hoyne and William B. Snowhook, come and filed their additional plea in the words and figures following, to wit:

Additional plea.

U. States circuit court, northern dist. of Illinois, July term, A. D. 1861.

THOMAS HOYNE and WILLIAM B. SNOWHOOK, impleaded &c., *ads.*
THE UNITED STATES OF AMERICA.

And for a further plea in this behalf, these defendants, Thomas Hoyne and William B. Snowhook, by their attorneys, &c., say, *actio non*, because they say that prior to the execution by these defendants of the bond, in said declaration, mentioned as sureties for said Charles N. Pine, to wit, on the first day of September, A. D. 1858, the said Charles N. Pine was duly appointed marshal for said
19 northern district of Illinois, to have and to hold said office from thence until the close and termination of the then next ensuing session of the Senate of the United States, unless sooner removed by the President; and the said Charles N. Pine thereupon, to wit, on the day and year aforesaid, duly executed his bond with sureties for the faithful performance of the duties of the said office of marshal for and during the period aforesaid; and thereupon, to wit, on the day and year aforesaid, the said Charles N. Pine entered upon the performance of the duties of said office, and continued and remained in said office, under said appointment, from thence until and at the time of his further appointment to said office for the further term mentioned in the bond or writing obligatory in said declaration mentioned; and the said Charles N. Pine, during the period aforesaid, and while he so held the said office of marshal for the northern district of Illinois under said appointment made on the first
20 day of September as aforesaid, received from the plaintiff large sums of money to be disbursed for and on account of said plaintiff in the regular course of his business as marshal as aforesaid, and these defendants aver that said Charles N. Pine, during the period last aforesaid, and while he so held the said office of marshal as aforesaid, and before the execution by these defendants of the said bond or writing obligatory in said declaration mentioned, wrongfully and fraudulently converted to his own use a large portion of the moneys so received by him from the said plaintiff, as aforesaid, to be

disbursed as aforesaid, amounting, in all, to the sum of six thousand dollars; and these defendants aver that the said Charles N. Pine did not afterwards, nor during the continuance of his office of marshal as aforesaid, under said appointment made on the first day of September aforesaid, nor at any time before the execution, by these defendants, of the said bond or writing obligatory in said declaration mentioned, pay to said plaintiff, or on account of said plaintiff,
21 said sum of six thousand dollars, so wrongfully and fraudulently converted by him, as aforesaid, or any portion thereof; nor did he, during the period last aforesaid, disburse the same or any portion thereof, for or on account of said plaintiff, but therein made default; and was so in default to the said plaintiff at the time of the execution by these defendants of the said bond or writing obligatory in said declaration mentioned; and these defendants aver that before the execution, by these defendants, of the said bond or writing obligatory in said declaration mentioned, to wit, on the first day of February, A. D. 1859, it was made known and communicated to said plaintiff that the said Charles N. Pine had, so aforesaid, wrongfully and fraudulently converted and appropriated to his own use said moneys so received by him from said plaintiff, as aforesaid; and these defendants further aver that at and for a long time prior to the time of the execution, by these defendants, of the said bond or writing obligatory in said declaration mentioned, it was well known to said plaintiff that the said Charles N. Pine had so wrongfully and fraudulently
22 converted and appropriated to his own use said moneys so received by him from said plaintiff, as aforesaid, and that he was a defaulter to said plaintiff as aforesaid, yet the said plaintiff did not, as it was its duty to do, nor did either or any of its agents, communicate or make known to these defendants, or to either of them, the facts that said Charles N. Pine had so converted to his own use said moneys as aforesaid, or that he was in default to said plaintiff as aforesaid, or that he had not theretofore well and faithfully done and performed all the duties appertaining to his said office of marshal, but fraudulently and intentionally, for the purpose of inducing these defendants to execute said bond or writing obligatory in said declaration mentioned as sureties for said Pine, concealed all knowledge thereof from these defendants, nor did these defendants, nor did either of them, at or prior to the time of the execution by them of said bond or writing obligatory in said declaration mentioned, know, or have any reason to suppose, that said Charles N. Pine had, before that time, converted to his own
23 use any of the moneys so received by him of said plaintiff, as aforesaid, or that he was to any extent, or for any sum, a defaulter to said plaintiff, or that he had not, until that time, well and faithfully done and performed all and singular the duties appertaining to his said office of marshal; and these defendants, supposing and believing that the said Charles N. Pine had well and faithfully performed all the duties appertaining to his office of marshal, and that he had well and faithfully paid out and disbursed, for and on account of said plaintiff, all moneys theretofore received by him from said

plaintiff as marshal during the period of his appointment first above mentioned, executed as his sureties the bond or writing obligatory in said declaration named, to wit :

MILLER & LEWIS, *Att's.*

Endorsed : Filed July 22, 1861.

WM. H. BRADLEY, *Cl'k.*

24 And afterwards, to wit, on the 7th day of October, A. D. 1861, the said plaintiff, by E. C. Larned, its attorney, comes and files a demurrer to said additional plea in the words and figures following, to wit :

Demurrer to additional plea.

United States of America, northern dist. of Ill.—U. S. circuit court, Oct. T., 1861.

U. STATES
v.
C. N. PINE *et al.* } D'bt on bond.

And now come the plff., by their att'y, E. C. Larned, and demur to the additional pleas filed in said cause by Thomas Hoyne and W. B. Snowhook, impleaded, &c., and say that the said plea, and the matter therein pleaded, are not sufficient in the law, and pray judgment, &c.

By its att.:

E. C. LARNED,

Endorsed : Filed Oct. 7, 1861.

WM. H. BRADLEY, *Cl'k.*

25 And afterwards, to wit, on the 12th day of October, A. D. 1861, in the record of the proceedings of said court in said cause, is the following entry, to wit :

THE UNITED STATES OF AMERICA
v.
ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, Iram Nye, George D. Kellogg, Edward M. Dewey, and William B. Snowhook, impl'd with Charles N. Pine, Benjamin F. Pine, Richard J. Hamilton, and Breckenridge F. Blackburn. } Debt.

Now come the parties, by their attorneys, and thereupon comes on to be heard the demurrer of the plaintiffs to the special plea of the defendants, Thomas Hoyne and William B. Snowhook, and after argument, the court being fully advised thereon, sustains said demurrer.

26 And afterwards, to wit, on the 1st day of November, A. D. 1861, the said defendant, Ezekiel S. Smith, by his attorneys, come and files his pleas in the words and figures following, to wit:

Plea of E. S. Smith.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

In the circuit court of said United States for the 7th circuit and northern district of Illinois.

THE UNITED STATES OF AM RICA
v.
CHARLES N. PINE, EZEKIEL S. SMITH, *et al.* } Debt.

And the said defendant, Ezekiel S. Smith, by his attorneys, comes and defends the wrong and injury, when, &c., and says he does not owe the said plaintiff the said sum above demanded, or any part thereof, in manner and form as the said plaintiff has above
27 thereof complained against him; and of this he puts himself upon the county, &c.

KNOX, EUSTACE & REED,
Att's for def't, Smith.

2. And for a further plea in this behalf by leave, &c., the said defendant says, *actio non*, because he says that the bond or writing obligatory mentioned and described in said plaintiff's declaration and the several counts thereof, is not his act or deed; and this he prays may be enquired of by the country, &c.

KNOX, EUSTACE & REED.
Att'ys for d'f, Smith.

And the plaintiffs do the like by their att'y,

E. C. LARNED.

Endorsed: Filed Nov. 1, 1861.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 26th day of November, A. D. 1861, in the record of the proceedings of said court, in said cause, is the following entry, to wit:

28 THE UNITED STATES OF AMERICA
v.
ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, Iram Nye, George D. Kellogg, Edward M. Dewey, and William B. Snowhook, impl'd with Charles N. Pine, Benjamin F. Pine, Breckenridge F. Blackburn, and Richard J. Hamilton. } Debt.

Now come the parties, by their respective attorneys, and on motion of E. C. Larned, esq., the district attorney, the death of the defendants, Edward M. Dewey and Richard J. Hamilton, are suggested of

record; and it appearing to the court that the defendants, Isaac Cook, Iram Nye, and George D. Kellogg, have been regularly served with process, and they being now ruled to plead instanter, and failing to plead or answer to said rule, and the said defendants being now each three times solemnly called, come not, but make default: It is thereupon considered by the court that their defaults be entered, and that the plaintiffs have and recover of the defendants, Isaac Cook, Iram Nye, and George D. Kellogg, their damages; and the remaining
29 defendants, impleaded as aforesaid, now come, by their attorneys, and upon issue joined, thereupon come a jury of good and lawful men, to wit: Jacob Harris, J. Parmly, S. W. Swift, D. L. Wood, William Moore, David Bloom, E. B. Kingsley, Michael Burns, Elias Benner, Jacob Portman, A. L. Telford, and Thomas Spear, who were duly elected, tried, and sworn, as well and truly to try the issue joined upon the pleas of the defendants, Ezekiel S. Smith, Thomas Hoyne, and William B. Snowhook, as to enquire of the plaintiff's damages as against the defendants defaulted as aforesaid; and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial is postponed until to-morrow morning.

And afterwards, to wit, on the 27th day of November, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry, to wit:

30

THE UNITED STATES OF AMERICA *v.* ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, *et al.*	Debt.

Now come again the parties by their attorneys, and now come again the jury heretofore empannelled in this cause, and after a further hearing of the testimony, the hour of adjournment having arrived, the further trial is postponed until to-morrow morning.

And afterwards, to wit, on the 28th day of November, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry, to wit:

THE UNITED STATES OF AMERICA *v.* ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, George D. Kellogg, and William B. Snowhook, impl'd with Charles N. Pine, Benjamin F. Pine, and Breckinridge F. Blackburn.	Debt.

31 Now come again the parties, by their attorneys, and now come also the jury heretofore empannelled in this cause, and after hearing the concluding evidence, the arguments of the counsel, and receiving the instructions of the court, the jury retired to consider of their verdict, and after a short absence, returned into court the following verdict, to wit: "We, the jury, find the writing obligatory in the penalty of twenty thousand dollars, upon which this suit

is brought, to be the act and deed of the defendants; and we assess and report the damages of the plaintiffs, at the sum of three thousand seven hundred and ninety-six dollars and eighty cents."

And the defendants, by their attorneys, move the court for a new trial and in arrest of judgment.

And afterwards, to wit, on the 14th day of December, A. D. 1861, in the record of the proceedings of said court in said cause, is the following entry, to wit:

32

THE UNITED STATES OF AMERICA *v.* ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, Iram Nye, George D. Kellogg, and William B. Snowhook, impleaded with Charles N. Pine, Benjamin F. Pine, and Breckinridge F. Blackburn.	Debt.

Now come the parties, by their attorneys, and the court having fully considered, and being now fully advised on the motion of the defendants for a new trial and in arrest of judgment, overrules said motions, and awards judgment on the finding of the jury on this behalf.

And it appearing to the court that judgment has been heretofore, to wit, on the 25th day of July, A. D. eighteen hundred and sixty, rendered against the defendants for the penalty of said bond, declared on for the sum of twenty thousand dollars: It is thereupon considered and adjudged by the court that the plaintiffs do have

33 and recover of and from the said defendants, Isaac Cook, Thomas Hoyne, Ezekiel S. Smith, Iram Nye, George D. Kellogg, and William B. Snowhook, impleaded as aforesaid, the said sum of three thousand and seven hundred and ninety-six dollars and eighty cents, and damages, so as aforesaid assessed and reported by the jury, together with the costs and charges herein, amounting to the sum of fifty-one dollars and fifty-one cents, and that execution issue therefor.

34 And afterwards, to wit, on the 14th day of December, A. D. 1861, the defendants, by their attorneys, come and file their bill of exceptions in the words and figures following, to wit:

Bill of exceptions.

United States circuit court, seventh circuit, northern district of Illinois.

THE UNITED STATES OF AMERICA *v.* CHARLES N. PINE, BENJAMIN F. PINE, ISAAC COOK, Richard J. Hamilton, (since dead,) Thomas Hoyne, Breckinridge F. Blackburn, Ezekiel S. Smith, Iram Nye, George D. Kellogg, Edward M. Dewey, (since dec'd.) and William B. Snowhook.	Debt on bond.

Be it remembered that on the trial of this cause at the October term of the said circuit court of the United States, in the year

35 of our Lord one thousand eight hundred and sixty-one, the

said plaintiff, to maintain and prove the issues on its part, offered in evidence to the jury aforesaid a bond in the words and figures following:

"Know all men by these presents, that we, Charles N. Pine as principal, and Richard J. Hamilton, Benjamin F. Pine, Isaac Cook, Thomas Hoyne, Ezekiel S. Smith, Iram Nye, George D. Kellogg, Wm. B. Snowhook, Breckinridge F. Blackburn, and Edward M. Dewey, of the town of Chicago, in the State of Illinois, are held and firmly bound unto the United States of America in the sum of twenty thousand dollars lawful money of the said United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed with our hands and sealed with our seals, this 28th day of February, 1859. The condition of the above obligation is such: Whereas, the President of the United States hath, pursuant to law,
appointed the said Charles N. Pine to be marshal of the United
36 States for the northern dist. of Illinois, to have and to hold
the same with all the rights, privileges, and emoluments thereunto lawfully appertaining, for four years from the fifteenth day of December, 1858, unless sooner removed therefrom, as, by a commission to him bearing date the fifteenth day of December, 1858, more fully appears.

"Now, if the said Charles N. Pine, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue.

"BENJ'N F. PINE.	[SEAL.]
"I. COOK.	[SEAL.]
"TH. HOYNE.	[SEAL.]
"B. F. BLACKBURN.	[SEAL.]
"CHARLES N. PINE.	[SEAL.]
"RICH'D J. HAMILTON.	[SEAL.]
"E. S. SMITH.	[SEAL.]
"IRAM NYE.	[SEAL.]
"GEO. D. KELLOGG.	[SEAL.]
"E. M. DEWEY.	[SEAL.]
"WM. B. SNOWHOOK.	[SEAL.]"

Upon which bond appeared the following indorsements:

"CHICAGO, *March* 2d, 1859.

"All of the foregoing parties acknowledged the genuineness of their signatures to the above bond before me, except E. S. Smith,
37 and I am satisfied from my own knowledge, and from evidence, that his signature is also genuine.

"I therefore approve the bond as sufficient.

"THOS. DRUMMOND,
"*U. S. Judge.*"

"I, Charles N. Pine, do solemnly swear that I will faithfully execute all lawful precepts directed to the marshal of the northern district of Illinois under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal of the northern district of Illinois during my continuance in said office, and take only my lawful fees, and that I will support the Constitution of the United States. So help me God.

"C. N. PINE.

"Sworn to and subscribed before me, March 2d, 1859.

"THOMAS DRUMMOND."

"Filed March 2d, 1859.

"WM. H. BRADLEY, *Clerk.*"

To the reading of which said bond in evidence on the
38 ground, there appeared to be an alteration of said bond, without note or comment, which supposed alteration consisted of the erasure of what otherwise would seem to be one of the signatures to the said bond. The counsel for the defendants, Hoyne, Snowhook, and Smith, objected, on the ground that there was an erasure and alteration appearing upon said instrument, which it was the duty of the plaintiffs to explain.

Thereupon the plaintiff's counsel called Hon. Thomas Drummond as a witness, who was sworn, and whose statement was taken by consent, both parties waiving all exception, and which was as follows: "When this bond was brought to me for approval, it was precisely as it is now, except the names of the sureties were inserted by me on the first part of the bond, after the words 'That we, Charles N. Pine, as principal.' It was brought to me by either J. W. McGill, or defendant, C. N. Pine. The erasure of Philip A. Hoyne's name was there, just as it appears now. Pine had difficulty in getting sureties, and he had some time before told me Philip A. Hoyne had objections to having his name on the bond, and Hoyne afterwards said to me he did not want his name on the bond.
39 I had not then seen the bond. Afterwards it was brought to me with Hoyne's name erased. As I did not know the signatures of all the parties, I held the bond several days, and the sureties came in from time to time and acknowledged the execution of the bond before me, except defendant, Smith. I then approved the bond at the date of the certificate, and as I was personally acquainted with the signature of defendant, Smith, I certified thereto, as stated in my certificate endorsed on the bond. Being asked by defendants' counsel if Smith had ever consented to the erasure of Philip A. Hoyne's name, he said: 'I have no knowledge on the subject.'"

The counsel for the plaintiff then again offered to read the said bond in evidence, to which the counsel for the defendants, Hoyne, Snowhook, and Smith, still objected. But the said court then and there overruled said objection, and allowed the counsel for said plaintiff to read said bond in evidence to the said jury, to which de-

cision of the court, in overruling said objection and allowing said bond to be read in evidence to the jury, the counsel for the defendants last named did then and there except.

40 And there being on file in this cause a stipulation between the parties, in the words and figures following:

United States circuit court.

UNITED STATES OF AMERICA
vs.
CHARLES N. PINE, ISAAC COOK, THOMAS HOYNE, *et al.* } Debt or bond, $20,000.

It is hereby agreed and stipulated, by and between the parties to the above-entitled suit, that the defendants may introduce in evidence all official reports, statements, or documents, emanating from or published by authority of any of the departments of the gov't, or by Congress, the same as if the same were duly and properly certified according to law, when the introduction of such statement, report, or document, would be deemed or should be held competent or material evidence in said cause. And that particularly the letters and documents accompanying it, dated March 29, 1860, published and printed by order of Congress, written by the late Sec'y of Interior

41 Department, Jacob Thompson, transmitted to Congress in compliance with a resolution of the House of R. with accomp'y'g documents and accounts, in relation to Charles N. Pine, U. S. marshal, may be introduced without any further authentication of its contents, than appears in the publication ordered and printed by Congress, on its face, subject to all legal objections.

H. S. FITCH,
U. S. Att'y, N. D. Ill.
TH. HOYNE, *pro se.*
TH. HOYNE, *for def'ts.*

CHICAGO, *March* 25, 1861.

The counsel for the plaintiff then introduced and gave in evidence a transcript from the United States Treasury Department of the accounts of the defendant, Charles N. Pine, with the plaintiff, which transcript is in the words and figures following, to wit:

42 TREASURY DEPARTMENT,
Register's Office, October 13, 1860.

Pursuant to the act of March 3d, 1797, entitled "An act to provide more effectual for the settlement of accounts between the United States and receivers of public moneys," I, C. T. Jones, acting Register of the Treasury Department, do hereby certify that the annexed copies of reports of the 1st Auditor, numbered 9712, 10190, 11036, 11615, 12093, and 12675, as admitted and certified by the Comptroller upon the accounts of Charles N. Pine, late marshal of the northern district of Illinois; also of the statements, and statements of differences, and of the treasury warrants, and of drafts issued thereon, are a transcript from the books and proceedings of the treasury; and that the copies

of the accounts current of said late marshal, and of paper marked W, with statement No. 11036, and papers marked A, B, C, E and X, with statement No. 12093, and paper marked F, with statement No. 12675, are true copies of the originals on file in this office.

C. T. JONES, *Acting Register.*

Be it remembered, that C. T. Jones, esq., who certified the annexed transcript, is now, and was at the time of doing so, acting register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, P. Clayton, acting Secretary of the Treasury of the United States, have hereunto subscribed my name, [SEAL.] and caused to be affixed the seal of this department, at the city of Washington, this thirteenth day of October, in the year of our Lord 1860.

P. CLAYTON,
Acting Secretary of the Treasury.

43

No. 9712. TREASURY DEPARTMENT,
First Auditor's Office, Dec. 16, 1858.

I hereby certify that I have examined and adjusted an account between the United States and Charles N. Pine, marshal for the northern district of Illinois, and find that he is chargeable as follows, to wit:

To warrants on the treasurer:

For No. 7632 dated Sept. 21, 1858	3,740 00
For No. 7736 dated Sept. 29, 1858	8,000 00
Dollars	11,740 00

I also find that he is entitled to the following credits:

By amount of his own compensation for attendance, travel, and serving process on behalf of the United States, at and previous to the July adjourned term, 1858, circuit and district courts, as per abstract herewith		154 50
By his disbursements for said courts, to wit:		
For witness, per diem, and mileage	$63 50	
" jurors " " "	853 50	
" expenses of prisoners	63 35	
" contingencies	334 78	
		1,315 13
Commission $1,315 13, at 2 per cent		26 30
Balance due from him to the United States		10,244 07
		11,740 00

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

T. S. SMITH, *First Auditor.*

TO THE FIRST COMPTROLLER OF THE TREASURY.

$10,244 07

FIRST COMPTROLLER'S OFFICE.

Balance found due the U. States, per auditor	10,244 07
Add, as per Comptroller's amended statement	35 70
Comptroller's amended am't found due the U. S	10,279 77

I admit and certify the above amended balance this first day of January, 1859.

W. MEDILL, *Comptroller.*

TO THE REGISTER OF THE TREASURY.

44 *Charles N. Pine, marshal for the northern district of Illinois, in ac. with the United States.*

DR.

To warrants on the treasurer:

For No. 7632, dated Sept. 21, 1858	$3,740 00
" 7736, dated Sept. 29, 1858	8,000 00
Dollars	11,740 00

Statement of differences.

Bal. found due the U. S. from the marshal, as per this adjustment	$10,279 77
Bal. admitted as due the U. S., per his ac. current	2,175 17
Showing a difference of dollars	8,104 60

Arising thus:

Amount of warrant on the treasurer, No. 7736, dated Sept. 29, 1858, charged in this statement, but not credited by the marshal in his ac. c	*8,000 00
Item 1. Amount paid Owen Dougherty and A. P. Sharp, bailiffs, disallowed by the judge	*68 00
Item 2. Amount charged for collecting draft on collector of Milwaukie disallowed. There is no authority in the bill to allow his charge	*9 35
	*8,077 35
Cr. error in calculation of commissions	*8 45
Difference found	*8,068 90

* All off. See ac. Oct. T., 1858, Rep. 10190.

Item 3, ab't ct. No. 6, vo. 7, Ch'ge (in Calvias, Page & Hoyne's stationery bill) for 3,500 court wrappers at $1, suspended for explanation, (dis. allowed)	35 00
" 4. Add over cr. in calculation of commissions	*70
Difference found	*8,104 60

D. S. DANA.

TREASURY DEPARTMENT,
Comptroller's Office, Dec. 31st, 1858.

CR.

By amount of his own compensation for attendance, travel, and serving process on behalf of the United States, at and previous to the July adjourned term, 1858, circuit and district court, as per abstract herewith		154 50
His disbursements for said term, to wit:		
For witnesses per diem and mileage	63 50	
" jurors " "	853 50	
" expenses of prisoners	63 35	
" contingencies	299 78	
		1,280 13
Commission on $1,280 13, at 2 per cent		25 60
Balance due from him to the United States		10,279 77
	Dollars	11,740 00

LEWIS JORDAN.

TREASURY DEPARTMENT,
First Auditor's Office, December 16, 1858.

45 *The United States in account current with C. A. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States district and circuit court held at Chicago, July, adjourned term, 1858.*

DR.

To compensation of grand jurors	Abstract No. 1	.... ..
" " petit jurors	" 2	$853 50
" " witnesses	" 3	63 50
" " marshal	" 4	154 50
To jailers's fees and expenses of supporting prisoners, &c	" 5	63 35
To contingent expenses of court	" 6	402 78
To supplemental	" 7	9 35

* All off. See ac. Oct. T., 1858, Rep. 10190.

To marshal's commissions on the above less amount of abstract No. 4, at 2 per cent	17 85
To balance forward to account, Oct'r term	2,175 17
	3,740 00

CR.

By draft No. 8057, dated Sept. 23rd, 1858, on W. Schoffler, Milwaukie	$3,740 00
	3,740 00

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered as therein stated; that the supplies charged were furnished for, and used by, the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal, the amounts thereof justly due to him as therein stated, as he verily believes.

C. N. PINE,
U. S. Marshal N. Dist. Illinois.

[SEAL.] Subscribed and sworn to this thirteenth day of November, in the year A. D. 1858, before m.

WM. H. BRADLEY.
Clerk of District Court U. S., Northern District of Illinois.

46 No. 10190. TREASURY DEPARTMENT,
First Auditor's Office, March 1st, 1859.

I hereby certify that I have examined and adjusted an account between the United States and Charles N. Pine, marshal for the northern district of Illinois, and find that he is chargeable as follows:

To balance due him, per report No. 9712	10,279 77
Dollars	10,279 77

I also find that he is entitled to credit as follows:

By amount of his own compensation for attendance, travel, and for serving process on behalf of the United States, at and previous to the October term, circuit and district courts, 1858, as per abstract herewith	896 30

By his disbursements for said courts, to wit:		
For witness, per diem and mileage	$915 70	
" jurors	1,724 90	
" expenses of prisoners	171 85	
" contingencies	916 91	
		3,729 36
Commission on $3,729 76, at 2 per cent		74 58
By balance due from him to the United States		5,579 53
	Dollars	10,279 77

As appears from the statement and vouchers herewith transmitted for the decision of the Comptrollers of the Treasury thereon.

T. S. SMITH.
First Auditor.

$5,579 53.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

Balance due U. States, per within report	$5,579 53
Deduct, as per amended statement 10190	39 71
Leaving corrected balance due U. States	5,539 82

I admit and certify the above corrected balance this thirtieth day of March, 1859.

W. MEDILL, *Comptroller.*

To the REGISTER OF THE TREASURY.

47 *Charles N. Pine, marshal for the northern district of Illinois, in ac. with the United States.*

DR.

To balance due him, per report No. 9172	10,279 77
Dollars	10,279 77

CR.

By amount of his own compensation for attendance, travel, and for serving process on behalf of the United States, at and previous to the October term, circuit and district courts, 1858, as per abstract herewith		861 90
" his disbursements for said courts, to wit:		
For witness, per diem and mileage	$915 70	
" jurors	1,724 90	

For expenses of prisoners	171 85	
" contingencies	989 56	
		3,802 01
" commission on $3,802 01, at 2 per cent		76 04
" balance due from him to the United States		5,539 82
	Dollars	10,279 77

LEWIS JORDAN.

TREASURY DEPARTMENT,
First Auditor's Office, March 1st, 1859.

JAS. AULD.

COMPTROLLER'S OFFICE, *March* 30, 1859.

47 *Statement of differences.*

Bal. found due from the marshal to the U. S., per this adjust	5,539 82
Bal. admitted as due the U. S. by marshal, as per his ac. current	4,943 68
Showing a difference of dollars	596 14

Arising thus :

Amount of supervisions per report No. 9712, still outstanding	35 00
Item 1. Ab. 3. Am't paid Peter Dubuque susp'd; the witness signed with a X, and that is not attested. Rech'gd by mar. in ac. for Mar. T., '59, and allowed therein	21 40
" 2. Ab. 4, vou. 1. U. S. *vs.* Samuel Caruthers; charge for service of warrant and mileage on same, transportation of prisoner, and expense while endeavoring to arrest, disall'd out of the district. This service should be charged by the marshal for the southern district	98 40
" 3. Ab. 6, vou. 5 and 6. Am'ts paid two bailiffs, say Jno. L. Mulliner $108, and Owen Dougherty $108, disall'd, only 3 bailiffs having been disallowed by the judge	216 00
" 4. Vou. 8. Amount of stationery, bill of Morrison & Bradley, for use of marshal's office, disall'd, not chargeable to the United States	20 13
" 5. Vou. 17. Disallow of the gas bill all charges, save for the court-room and judge's room, which amount to $20 30, disallw. The U. S. cannot furnish light for district attorney and clerk's office	16 17

Item 6.	Vou. 18. Bill of D. A. Foot, for locks and keys, suspended. These were then furnished for the marshal's office; if so, they are properly chargeable to him, and not to the U. States	6 25
" 7.	Vou. 20. Bill of John Locklan for repairs to marshal's office disall'd; same reason last item	5 75
" 8.	Vou. 21. Bill of Revere Hotel susp'd, for order of court authorizing the refreshments for Jan'y recharged, and all'd in ac. for March T., 1859	24 00
"	Vou. 22. Bill of Pauser & Co. susp'd, until the necessity of purchasing three baskets is shown; all'd herein	2 65
"	Vou. 29. Am't paid Adam Curry, janitor, susp'd, until authorized by the Secretary of the Interior; (unnecessry;) allowed herein	108 00
"	Commissions more than allowed	28 14
" 9.	Amount recharged for wrappers, explanation filed herewith, but not deemed satisfactory, the same having been suspended, per report No. 9712, and recharged here, now disallowed, and becomes a difference in personal adjustment also. These wrappers are printed blanks for the clerks' convenience, and are chargeable to his emoluments, and should not have been paid for by the marshal	35 00
	Difference found, Dollars	506 24
Difference brought down		506 24
Add the following:		
10.	Abs't 4, vou. 1. Attendance of marshal before U. S. comm'r Nov. 20, 22, Dec. 4, 22, 23, 24, and 25, disallowed, per diem for attendance on U. S. C. and D. courts being charged for same days	14 00
11.	Abs't 4, vou. 3. Mileage to subpœna Pollock, Walker, and Reese, at Galesburg, disallowed. The same travel is allowed on the next following charge (to Cameron) on sub. issued same date	10 20
Item 12.	Ab. 4, vou. 3. Case *vs.* W. H. Marble, mileage to subpœna Reese and Pollock disallowed, the same travel being allowed on preceeding charge in voucher	10 20
" 13.	Ab. 6, vou. 25. Charge for "1.8 qr. N. M. app'mt docket," suspended, for explanation as to its use	17 00
" 14.	Ab. 7. Bill for 3 stoves and fixtures suspended for explanation. It appears from the copy of	

letter from Sec'y of Interior, which accompanies this abs't, that the marshal was authorized to purchase one stove, (for the U. S. att'y,) the price not to exceed $15. For whom were these three purchased, and under what authority	38 50
Difference as above off	$596 14

Mar. credits am't of these differences in ac. for March term, 1859.

49 *The United States in account current with Charles N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States circuit and district courts, held at Chicago, October term*, 1858.

DR.

To compensation of grand jurors	Abstract No. 1	$775 60
" petit jurors	" 2	949 30
" witnesses	" 3	937 10
" marshal	" 4	994 70
" jailor's fees and expenses of supporting prisoners, &c	" 5	171 85
" contingent expenses of court	" 6	1,294 86
" supplemental	" 7	38 50
" marshal's commissions on the above, less amount of ab'ract No. 4, at 2 per cent		104 18
" balance carried forward to Dec. term		4,943 68
		$10,209 77

CR.

By balance as per last ac. rendered, adjourned July term		$2,175 17
" draft No. 8169, dated Sept. 30th, 1858, on Col., Milwaukie		8,000 00
" abstract 6, amount paid A. P. Sharp and O. Dougherty, bailiffs	68 00	
" abstract 7, am't paid collecting draft on Milwaukie $37 40	9 35	
	$77 35	
" abstract 6, voucher 7, 3,500 court wrappers, suspended for explanation, which is herewith furnished in paper marked A	$35 00	

Bal. cr. for commissions allowed in report of treasury No. 9712, on last ac. rendered	7 75		
		42 75	
			34 60
			$10,209 77

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered, as therein stated; that the supplies charged were furnished for and by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal, the amount thereof justly due to him as therein stated, as he verily believes.

CHARLES N. PINE.

Subscribed and sworn to this twenty-seventh day of January, in the year A. D. 1859.

Before me,

[SEAL.] WM. H. BRADLEY,
Clerk of District Court United States,
Northern District of Illinois.

51 No. 11036. TREASURY DEPARTMENT,
First Auditor's Office, August 4, 1859.

I hereby certify that I have examined and adjusted an account between the United States and Charles N. Pine, U. S. marshal for the northern district of Illinois, and find that he is chargeable as follows, to wit:

To balance due from him, per report No. 10190	5,539 82
To warrant on the treasurer:	
For No. 9285 dated April 2d, 1859	7,219 20
For No. 9981 dated June 25, 1859	1,658 09
Dollars	14,417 11

I also find that he is entitled to credit—

By amount of his own compensation for attendance, travel, and serving process in behalf of the United States, at and previous to the December term, 1858, and March and May terms, 1859, circuit and district court, as per abstract herewith		2,271 64
His disbursements for said courts, to wit:		
For witnesses per diem and mileage	$1,391 55	
" jurors " "	4,779 10	

For expenses of prisoners	689 33	
" contingencies	2,313 18	
		9,173 16
" Commission on $9,173 16, at 2 per cent		183 47
" Balance due from him to the U. S.		2,788 84
	Dollars	14,417 11

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

$2,788 84. T. L. SMITH,
First Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

Bal. due U. S. brought down	$2,788 84
Deduct, as per amended statement	43 67
Corrected bal. due U. S.	$2,745 17

COMPTROLLER'S OFFICE.

I admit and certify the above corrected balance, this fifth day of December, 1859.

W. MEDILL,
Comptroller.

To the REGISTER OF THE TREASURY.

51 *Charles A. Pine, U. S. marshal for northern district of Illinois, in acc. with the United States.*

DR.

To balance due from him, per report No. 10190	5,539 82
To warrant on the treasurer:	
For No. 9285, dated April 2nd, 1859	7,219 20
" No. 9981, dated June 25th, 1859	1,658 09
Dollars	14,417 11

CR.

By amount of his own compensation, for attendance, travel, and serving process in behalf of the United States, at and previous to the December term, 1858, and March and May terms, 1859, circuit and district court as per abstract herwith		2,131 46
His disbursements for said courts, to wit:		
For witnesses per diem and mileage	$1,620 55	
" jurors " "	4,779 10	
" expense of prisoners	689 33	
" contingencies	2,264 43	
		9,353 41

For commission on $9,353 41, at 2 per cent..... 187 07
" balance due from him to the U. S..... 2,745 17

Dollars 14,417 11

LEWIS JORDAN.

TREASURY DEPARTMENT,
First Auditor's Office, August 4, 1859.

JAMES AULD.

COMPTROLLER'S OFFICE, *December* 5, 1859.

52 *Statement.*

Bal. found due from the marshal for this adjustment..... 2,745 17
Bal. admitted by the marshal as due the U. S., as per his acc. c. 1,567 82

Showing a difference of.....Dollars 1,177 35

Arising thus:

December term, 1858.

Item. Ab. No. 3. Am't paid witnesses before commissioner suspended, until it is shown in what case each served; as the U. S. dis't judge ordered these payments, the marshal must be credited therewith, under 1st sec., art. 56. They should be paid on the order of the commissioner at the time of their discharge; allowed herein..... 2,229 00

1. Ab. 4, vou. 1. Charge for attendance Dec. 25 and Jan'y 1st, susp'd, until it is shown that court was in session on these days, all'd per rep. 12093.....R 10 00

Services in circuit court.

2. Vou. 2. U. S. *vs.* Benedict Schlossman, charge for attendance at court by V. A. Boyer, disallowed. He was paid as bailiff same day.....S 2 00
3. Charge for 2 copies of order of court served on ex marshal, disallowed. The fee for service covers the charge for copies.....S 3 00
4. U. S. *vs.* Samuel R. Mathews *et als.*, charg'd for serving process and mileage on same, susp'd for further explanation as to the nature of the debt, and also for names of persons on whom, and the place where, service was made..... 13 00

Services before commissioner.

5. U. S. *vs.* Wm. Peck and C. W. Kidder, charge for attendance before court, February 3d, by J. S. Littell, disall'd. Littell is allow'd for attendance on court same day as bailiffs.....S 2 00
6. U. S. *vs.* John McNarry *et al.*, charge for attendance before com'r, Jan'y 29, 30, 31, and Feb'y 1st, by J. W. Magill, disall'd. Magill is allow'd for attendance on same days as bailiff.....S 8 00
7. U. S. *vs.* Jeff. Williams and Wm Keary, charge for mileage of self and Wm. Frizzell, disall'd, as they are both allow'd mileage in previous case on same day and from same place..... 36 40
8. Charge for attendance before com'r by J. W. Magill, Jan'y 30, 31st, and Feb'y 1st, disall'd; same reason item 7.....S 6 00
9. Same case, charge for serving subpœnas on 4 persons and mileage on same, susp'd, for their names, all'd per rep. 12093.....R 12 92
10. U. S. *vs.* Dennis Ward *et al.*, charge for attendance before com'r by J. H. Magill and Littell as guard, Jan'y 15 and 17, disall'd. Both all'd for same days as bailiffs.....S 8 00

U. S. *vs.* R. M. Hough *et al.*, charge for serving subpœnas, susp'd for nature of the case. (Resisting marshal; allowed herein)..... 1 50

53 11. U. S. *vs.* John Baland, charge for attendance of Dougherty and Boyer before com'r, Sunday, March 6th, susp'd, until the necessity of attendance on that day is shown, all'd per rep. 12093..R 2 00

12. U. S. *vs.* Thales Lindsley, expenses while making arrest, susp'd, for items and detailed statement thereof, made in conformity with decision of Sec'y. Int. of Oct. 29, 1858, all'd per rep. 12093.....R 4 00
13. Charge for attendance before com'r, Feb'y 19, by J. H. Magill, disall'd, as in item 6.....S 2 00
14. U. S. *vs.* Wm. Taylor, mileage of self while transporting prisoner, disall'd, as mileage is all'd in case of Johnson for same day and from same place.... 21 00
15. Charge for summoning witnesses and mileage on sub., suspended, as above witnesses were summoned in case Johnson. Were these separate writs allowed per rep. 12093?.....R 3 44
16. Charge for serving subpœnas and mileage on the same case *vs.* B. Williams, susp'd for names of witnesses, allowed per rep. 12093.....R 7 60

17. U. S. *vs.* Hugh Roberts, mileage of self while transporting prisoner, disall'd; all'd for same day in case Johnson 21 00
18. Charge for serving subpœnas on 6 witnesses and mileage, susp'd for names, all'd per rep. 12093..R 4 80

Services in dis't court.

19. U. S. *vs.* Thales Lindsley. Fees in this case disall'd, as the marshal makes the same charge in his acc. for fees before commissioner.....S 55 32
20. U. S. *vs.* Samuel Corentess. Fees susp'd for cause of action and place were service was made, all'd per rep. 12093.....R 8 80
21. U. S. *vs.* J. R. Belleville, mileage to serve subpœna on Jesse Lombard, susp'd for place where service was made..... 8 22
22. U. S. *vs.* Wm. Despain, mileage to serve subpœna on Ira Baker and George Bainbridge, susp'd for place service, all'd per rep. 12093.....R 10 80
23. Mileage to serve subpœna on H. C. Foot and T. H. True, susp'd for place of service..... 10 80
24. Mileage to serve on Ira Colton, J. T. Burnett, and G. C. Lamphene, susp'd for place of service, and then disallowed, as in last item..... 10 80
25. Mileage to serve on F. P. Sisson, L. W. Mitchell, and Wm. Ogden, susp'd, as in item 24..... 10 80
26. Mileage to serve subpœnas on R. N. Pollock, George Brown, J. E. Reese, and J. B. Armstrong, susp'd for place where service was made, all'd per rep. 12093.....R 10 80
27. Ab. No. 6, vou. 1, 2, 3. Am't paid bailiffs for Dec. 25 and Jan'y 1st, susp'd until it is shown that the court was in session on those days, all'd per rep. 12093.....R 12 00
28. Vou. 5. Am't paid for letter paper, envelopes, note paper, and diary for marshal, disall'd, as not chargeable to the U. S.....S 15 50
29. Am't paid for bond paper, disallowed; same reason.....S 11 00
30. Vou. 9. Disallow of the gass bill, all charges for marshal, atty's and clerk's rooms.....S 50 16
31. Vou. 10 and 11. Am't paid for stores susp'd for approval of the Secretary of the Interior..... 48 71
32. Vou. 12. Am't paid for supplies for jurymen, susp'd for order of court, all'd per rep. 12093.....R 39 00
33. Vou. 14. Am't paid for desk for office, susp'd for approval of the Secretary of the Interior.....S 6 00
34. Vou. 15. Am't paid for tin box, susp'd, same reason..S 7 00

35. Vou. 17. Am't paid H. B. Ruger for attendance Dec. 25 and Jan'y 1st, susp'd, same reason item 28. All'd per rep. 12093. R. $1 11 all'd per rep. 12093. S. $1 79, abandoned by marshal ..... R 4 00
Commission more than allowed 8 96

March term, 1859.

36. Ab. 4, Nor. 2. U. S. *vs.* D. Martin, charge for mileage to serve, and mileage while conveying prisoner, susp'd for place where arrest was made. All'd per rep. 12093 ..... R 7 28
37. Ab. 4., vou. 12. U. S. *vs.* Wm. Linn *et al.* Fees in case suspended till cause of action is more fully shown 22 80
38. U. S. *vs.* Geo. A. Williams. Charge for travel, susp'd for place where service was made. All'd per rep. 12093 ..... R 6 72
39. U. S. *vs.* Andrew Westlake. Fees in this case susp'd, until the place of service is stated, and what was the nature of the contempl. disposition of the case given. All'd per rep. 12093 ..... R 43 06
40. Ab. 6., vou. 6. Am't paid for the following stationery, disall'd, viz: Legal cap, tracing linen, eyelets, fluid, and tape. These articles were evidently for the use of the clerk ..... S 63 25
41. Vou. 11. Bill for 3 stores and fixtures, susp'd for authority from Sec. Interior. (This item was susp'd in last statement.) 38 50
42. Vou. 12. Am't paid bailiffs at Oct. term, '58, (disall'd per rep. 10190,) were recharged, disall'd, the judge having refused to sanction the payment. 216 00
Commission more than allowed. (See item after 58 item) 6 35

May term, 1859.

43. Ab. 4., vou. 2. U. S. *vs.* Richard J. Hanna *et al.*, susp'd fees until nature of debt is shown 9 90
44. U. S. *vs.* John F. Snow *et al.*, suspended fees, as in last item 9 48
45. Vou. 3. U. S. *vs.* Harrison Collar, mileage to Galva on sub. for E. Davis, disall'd, as marshal is allowed herein for mileage to same place and same date, in case Pine G. Williams 8 64
46. U. S. *vs.* Alonzo Remington, mileage to Galva to sub Babcock and Ward, disall'd, same as lasti tem 8 64
55 47. U. S. *vs.* Pierce Millard, mileage on subpœna disall'd. All'd mileage on same day and to same place, in case of Joseph H. Bracket 10 92

48. U. S. *vs.* Wm. Kearns, mileage of self while transporting prisoner disall'd. All'd for same day in case of David B. Sears 18 20
49. Ab. 6, vou. 14. Bill of Penton & Carter, for suppers for jury, susp'd for order of court, all'd, per rep. 12093 ..... R 18 00
50. Vou. 15. Bill of Stoddard & George, for supplies, susp'd, as in last item, all'd per rep. 12093 ..... R 6 00
Commission more than allowed, (all'd per rep. 12093) R 47

December term, 1858.

Cr. Ab. 4. U. S. *vs.* Wm. Taylor. Error in addition of fees 1 00

Difference found ..... Dollars 977 59

Statement of differences continued.

December term, 1858.

Ab. 4, vou. 2. Services before commissioners.

51. U. S. *vs.* Dennis Ward *et al.*, charge for committing and discharging 9 prisoners. Only 4 were committed; disallow for 5 ..... S 5 00
52. U. S. *vs.* Collar & Williams, mileage of self (or Pollock) from Galesburg to Chicago disallowed, being same travel as made in removal of Johnson, Remington and others 18 00
53. U. S. *vs.* H. Roberts, attendance of deputy Pollock before comr., Feb'y 13, (Sunday,) disallowed. There was no examination on that day, all'd per rep. 12093. ..... R 2 00
54. U. S. *vs.* Crowe, district court, serving subpœnas for grand jury on C. B. Smith and J. Cours. Charged twice, 2d charge disallowed 1 00
55. U. S. *vs.* P. B. Roberts *et al.*, mileage to sub. 4 witnesses at Peoria, $10 80. Charged sub. was issued same day (Feb. 1) as in case *vs.* Hartel, and both were served Feb'y 3d by the same deputy. Mileage to Rock Island is allowed on that, and 94 miles extra travel is allowed on this. (Peoria being 47 miles off the main line to R. I.) the remainder disall'd ..... S 5 16
56. U. S. *vs.* Sears, mileage to Rock Island to sub. Lindsley, Day, and Frizzell disall'd, being same travel as all'd in case *vs.* Hartell 10 92

March term, 1859.

57. Ab. 4. U. S. *vs.* Krummack, service of sub. on Wm. Fricke, charged twice ..... S 50

58. Ab. 6, vou. 7. Bill of J. McMahon, for 5 cords
56 hickory wood and 2½ cords oak, and for cutting, splitting and delivering same, disallowed. The same was charged and allowed in ac. for Dec'r term 48 75

Commissions charged in this account current more than allowed, S $0 61; error of marshal in recharging com'r, S $1 27; commission, $63 25.. 5 45

May term, 1859.

59. Ab. 4, vou. 3. U. S. *vs.* A. Remington, mileage to Victoria to sub. H. Strong and E. A. Cook disallowed. The same travel is allowed on sub. to Galesburg, in case *vs.* H. Roberts 9 84

60. Ab. 4. vou. 3. U. S. *vs.* J. Hartel, mileage of guard, William Frizzel, disallowed. He was allowed mileage as a witness for the same trip .....S 18 30

61. Ab. 4, vou. 3. U. S. *vs.* J. N. Brackett, mileage to serve warrant of May 24 and mileage of prisoner, suspended for explanation. Defendant was arrested May 18, and transported to Chicago. Did he escape and get back to Rock Island? 29 28

62. Ab. 4, vou. 3. Mileage to sub. Fairclough and McEmery (in case *vs.* Brackett) disallowed, being same travel as allowed for witnesses in case *vs.* Greer Stanley 10 92

63. Ab. 4, vou. 3. U. S. *vs.* H. Coleman, mileage for going to arrest disallowed, as no arrest was made. Mileage will be allowed to reimburse a marshal when travel is actually made for the sole purpose of arresting a party, even when the arrest is not effected, but not in a case like this, where several mileages have been allowed for the same trip on other writs, issued at the same time 10 92

64. Ab. 4, vou. 3. U. S. *vs.* A. Carson, mileage disallowed. Same reason as in last item. 10 92

65. Abstract 4, vou. 3. U. S. *vs.* W. Haley, mileage disallowed. Same reason as last item 10 92

Difference as above $1,177 35

57 *Items marked R all'd. per Rep.* 12,093.

Item	1	10 00	Item	20	8 80
"	9	12 92	"	22	10 80
"	11	2 00	"	26	10 80
"	12	4 00	"	36	7 28
"	15	3 44	"	38	6 72
"	16	7 60	"	39	43 06
"	18	4 80	"	53	2 00

134 22

Item 27	12 00	Item 49	18 00
" 32	39 00	" 50	6 00
" 35	4 00		
			79 00
			2
		Com's,	1 58.00
			79 00
			134 22
			$214 80.00

Items marked S not recharged by the marshal and abandoned.

Item 2	2 00	Item 28	15 50
" 3	1 00	" 29	11 00
" 5	2 00	" 30	50 16
" 6	8 00	" 33	6 00
" 8	6 00	" 34	7 00
" 10	8 00	" 40	63 25
" 13	2 00		
" 19	55 32		152 91
" 57	5 00		2
" 55	5 16		
" 57	50	Com's,	3 05.82
" 60	18 30		152 91
			113 28
	113 28		
			$269 25
		Error in com's,	61
			$269 86
		Less credit error in adding item No. 51.	1 00
			$268 86

Bro't down		$1,177 35
Deduct	214 80	
	268 86	
		483 66
Aggregate outstanding		$693 69

58 *The United States in account current with Charles N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States circuit and dist. court, held at Chicago, December term,* 1858.

DR.

To compensation of grand jurors	Abstract No. 1.	$ 296 30
" " " petit jurors	" " 2.	2,224 40

To compensation of witnesses	Abstract No. 3.		802 40
" " " marshall	" " 4.		1,520 80
" jailor's fees and expenses of supporting prisoners	" " 5.		245 96
" contingent expenses of court	" " 6.		1,374 16
" supplimental	" " 7.		
" marshal's commission on the above, less amount of abstract No. 4, at 2 per cent			98 86
			6,562 88
			1,619 20

CR.

By balance, as per acc't current October term	$4,943 68
" " due March 7	1,619 20
	6,562 88

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered, as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses stated therein were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal, the amounts thereof justly due to him, as therein stated, as he verily believes.

CHARLES N. PINE.

Subscribed and sworn to this 18 day of March, in the year A. D. 1859, before me.

WM. H. BRADLEY,

[SEAL.] *Clerk of district court U. S., N. dist. Il's.*

59 *The United States in account current with Charles N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States circuit and district courts held at Chicago, March term,* 1859.

DR.

To compensation of grand jurors	Abstract No. 1.		.....
" " petit jurors	"	2.	.....
" " witnesses	"	3.	$27 40
" " marshal	"	4.	272 46
" jailer's fees and expenses of supporting prisoners, &c.	"	5.	268 69

To contingent expenses of court.....	Abstract No. 6.	$717 50
" supplemental.....	" 7.	.....
" marshal's commissions on the above, less amount of abstract No. 4, at 2 per cent.....		20 27
" balance as per account rendered for December term, A. D. 1859.....		1,619 20
" balance cash on hand May 1st, A. D., 1859.....		4,889 91
		7,815 34

CR.

By draft No. , dated , 18 , on.....	7,219 20
" amount of suspended items, as per treasury adjustment, March 30, 1859.....	596 14
	7,815 34
By balance.....	4,889 91

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered, as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal. the amounts thereof justly due to him, as therein stated, as he verily believes.

CHARLES N. PINE.

Subscribed and sworn to this tenth day of June, in the year A. D. 1859, before me.

[SEAL.] WM. H. BRADLEY,
Clerk of Dist. Court U. S., North. Dist. Ill.

60 *The United States in account current with C. N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States circuit and district courts held at Chicago, May term,* 1859.

DR.

To compensation of grand jurors.....	Abstract No. 1.	$654 60
" " " petit jurors.....	" " 2.	1,603 80
" " " witnesses.....	" " 3.	790 75
" " " marshal.....	" " 4.	920 02
" jailor's fees and expenses of support-		
" ing prisoners, &c.....	" " 5.	174 77
" contingent expenses of court.....	" " 6.	756 64
" supplemental.....	" " 7.	.....

To marshal's commissions on the above, less amount of abstract No. 4, at 2 per cent	$79 60
" cash on hand July 4, A. D. 1859	1,567 82
	6,548 00

CR.

By draft No. 9981, dated June, 1859, on New York	1,658 09
" balance, as per acc't current for March term	4,889 91
	6,548 00
By balance	1,567 82

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal, the amounts thereof justly due to him as therein stated, as he verily believes.

CHARLES N. PINE.

Subscribed and sworn to this fifteenth day of July, in the year A. D. 1859, before me,

[SEAL.] WM. H. BRADLEY,
Clerk of District Court of U. S.,
Northern District of Illinois.

61 No. 11615. TREASURY DEPARTMENT,
First Auditor's Office, December 14, 1859.

I hereby certify that I have examined and adjusted an account between the United States and Charles N. Pine, U. S. marshal for the northern district of Illinois, and find that he is chargeable as follows:

To balance due from him, per report No. 11036	2,745 17
To warrants on the treasurer:	
For No. 388, dated August 4, 1859	7,400
" No. 1102, dated Nov. 9, 1859	2,500
Dollars	12,645 17

I also find that he is entitled to credit:

By amount of his own compensation for attendance, travel, and serving process in behalf of the United States at and previous to the July term, 1859, as per abstract	668 89

By his disbursements for said court:

For witness per diem and mileage	$316 90	
" jurors " " "	1,714 10	
" expenses of prisoners	217 20	
" contingencies	863 87	
		3,112 07
" commissions on $3,112 07, at 2 per cent		62 24
" balance due the U. S.		8,802 06
	Dollars	12,645 17

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

T. L. SMITH,
First Auditor.

$8,802 06.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

Auditor's am't found due the United States bro't forward	$8,802 06
Add per Comptroller's amended statement	66 24
Comptroller's amended am't found due the U. S.	$8,868 30

I admit and certify the above amended amount this seventeenth day of December, 1859.

W. MEDILL, *Comptroller.*

To the REGISTER OF THE TREASURY.

62 *Charles N. Pine, U. S. marshal for the northern district of Illinois, in acc. with the United States.*

DR.

To balance due from him, for report No. 11036	2,745 17
To warrants on the treasurer:	
For No. 388, dated August 4, 1859	7,400 00
" No. 1102, dated Nov. 9, 1859	2,500 00
Dollars	12,645 17

CR.

By amount of his own compensation for attendance, travel, and serving process in behalf of the United States, at and previous to the July term, 1859, as per abstract herewith		602 56
By his disbursements for said court:		
For witnesses, per diem and mileage	$316 90	
" jurors " " "	1,714 00	

For expenses of prisoners	$217 20	
" contingencies	863 87	
		3,112 07
" commission on $3,112 07, at 2 per cent		62 24
" balance due the United States		8,868 30
Dollars		12,645 17

LEWIS JORDAN.

TREASURY DEPARTMENT,
First Auditor's Office, Dec. 13th, 1859.

D. S. DANA.

COMPTROLLER'S OFFICE, *December* 16, 1859.

63 *Statement of differences.*

Bal. found due the United States, per this adjustment	8,868 30
Bal. admitted by the marshal as due the U. S., per his ac. c.	4,959 47
Showing a difference of ..... Dollars	3,842 59
	$3,908 83

Arising thus: (See rep. No. 12093, credited by marshal ac. current, Oct. term, 1859.)

Am't of warrants for No. 1102, dated Nov. 9, 1859, charged herein, but not credited by marshal	2,500	
Am't of differences, per report No. 11,036, still outstanding and unaccounted for, (reduced per rep. 12093 to $693 69)	693 69	
Am't of suspensions and disallowances now made:		
Item 1. Ab. 4. vou. 2. U. S. *vs.* Francis M. Smith, disallow 2 commitments, July 25	1	R
" 2. Charge of attendance of self before U. S. Com. July 25 disallowed. All'd for same day before court	2	R
" 3. U. S. *vs.* George Smith, charge for mileage of self while transporting prisoners, disall'd. All'd for same day and from same place in case Francis M. Smith	16 80	
" 4. Charge for attendance before U. S. Com. July 26 and Aug. 6 disall'd; same reason item 2	4	R
" 5. U. S. *vs.* Thomas Kennedy, charge for two days' expenses while endeavoring to arrest, susp'd for date and detailed statement of items, charge of mileage to same having been made.	4	R
" 6. U. S. *vs.* Thomas Kennedy. Fees in second case disall'd, as only one warrant was necessary to arrest him. All'd per rep. 12093	11 08	
" 7. Vou. 3. U. S. *vs.* P. Millard, charge for mileage transporting prisoner, disall'd. All'd for same day and from same place in case Brecket	18 20	

Item 8. U. S. *vs.* John Hartel. Like charges at last item susp'd	18	20
P. O. Suit.		
" 9. Ab. No. 4. U. S. *vs.* Lewis M. Webber *et al.* Fees in this case susp'd for the nature of the debt or cause of action	14	92
P. O. Suit.		
" 10. U. S. *vs.* S. M. Preston. Fees in this case susp'd; same reason last item	7	70
" 11. T. S. *vs.* John T. Snow. Fees in this case susp'd; same reason as item 9. P. O. Suit.	9	48
Am't carried forward	3,784	73

64

" 12. U. S. *vs.* John C. Pepper *et al.* Fees in this case susp'd, until the marshal shows for what the execution was issued. The charge for printing must also be made out in conformity with the fee bill, and accompanied by the affidavit of the publisher as to the number of insertions, also explanation of nature of report to court	39	50
" 13. Ab. 6, vou. 9. Bill for supplies furnished juries susp'd for order of court authorizing. All'd per rep. 12093	18	00
" 14. Commissions more than all'd. Do.		36
Difference found ..... Dollars	3,842	59
Add:		
" 15. Ab. 4, vou. 2. Charge in case *vs.* Francis M. Smith for expenses in making arrest, (hotel bill,) mileage going to serve having been charged, suspended for detailed statement, in conformity with decision of Secretary of Interior of Oct. 29, 1858	6	00 R
" 16. Ab. 4, vou. 3. In case of U. S. *vs.* Henry Coleman charge of mileage for going to arrest disallowed; as in last adjustment, for like charge	10	92
" 17. Ab. 4, vou. 3. Charge for serving capias, mileage, etc., in case of U. S. *vs.* Joseph N. Bracket suspended, for like explanation as called for in last adjustment of similar charge in case against same defendant. (All'd per rep. 12093)	49	32
Differences found	$3,908	83

NOTE.—Items marked R, am't'g to $17 36, not recharged in his abstract of items, recharged, sent with letter of Aug. 16, 1859, and marked "C," filed with report No. 12093, Aug. 22, 1860. J. B.

65 *The United States in account current with C. N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States district court held at Chicago, July and adj'd July term*, 1859.

DR.

To compensation of grand jurors	Abstract No. 1		
" " petit jurors	" " 2	$1,714	10
" " witnesses	" " 3	316	90
" " marshal	" " 4	815	68
To jailer's fees and expenses of supporting prisoners, &c.	" " 5	217	20
To contingent expenses of court	" " 6	881	87
To supplemental	" " 7		
To marshal's commissions on the above, less amount of abstract No. 4, at 2 per cent.		62	60
To cash on hand Oct. 3d, 1859		4,959	47
		$8,967	82

CR.

By draft No. , dated , 18 , on	$7,400 00
" balance; as per statement in May term acc't	1,567 82
	$8,967 82
Balance Oct. 3d, 1859	$4,959 47

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered, as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses therein stated, were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal, the amounts thereof justly due to him as therein stated, as he verily believes.

CHARLES N. PINE.

[SEAL.] Subscribed and sworn to this twelfth day of October, in the year eighteen hundred and fifty-nine, before me,

WM. H. BRADLEY,
Clerk of District Court U. S., Northern District of Illinois.

66

No. 12093.] TREASURY DEPARTMENT,
First Auditor's Office, March 28, 1860.

I hereby certify that I have examined and adjusted an account between the United States and Charles N. Pine, late U. S. marshal for the northern district of Illinois, and find him chargeable—

To balance due from him, per report No. 11615	$8,868 30
Dollars	8,868 30

I also find that he is entitled to credit—

By his own compensation for attendance, travel, and serving process in behalf of the United States, at and previous to the October and December terms, 1859, as per abstract		526 04
By his disbursements for said courts:		
For witnesses, per diem and mileage	$701 50	
" jurors	2,517 45	
" expenses of prisoners	1 75	
" contingencies	235 87	
		3,456 57
" commission on $3,456 57, at 2 per cent.		69 13
" suspension, per report Nos. 11036 and 11615		252 26
" balance due the U. S		4,564 30
Dollars		8,868 30

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury therein.

$4,564 30. T. L. SMITH,
First Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

Balance due to the U. States bro't down	$4,564 30
Deducted as per amended statement	316 56
Corrected bal. due U. S.	$4,247 74

COMPTROLLER'S OFFICE.

I admit and certify the above corrected balance this second day of April, 1860.

W. MEDILL,
Comptroller.

To the REGISTER OF THE TREASURY.

67 *Charles N. Pine, U. S. marshal for the northern district of Illinois, in acc. with the United States.*

DR.

To balance due from him, per report No. 11615	8,868 30
Dollars	8,868 30

CR.

By his own compensation for attendance, travel, and serving process in behalf of the United States, at and previous to the October and December terms, 1859, as per abstract herewith		525 04
By his disbursements for said courts:		
For witnesses' per diem and mileage	$725 80	
" jurors	2,517 45	
" expenses of prisoners	1 75	
" contingencies	265 87	
		3,510 87
" commission on $3,510 87, at 2 per cent		70 21
" warrants No. 4 and 5, dated April 23, 1860, in favor of U. S. Treasurer		220 88
" suspensions per report No. 11036 and 11615, now allowed		293 56
" balance due the United States		4,247 74
Dollars		8,868 30

LEWIS JORDAN.

TREASURY DEPARTMENT, *First Auditor's Office, March* 28, 1860.

JAMES AULD.

COMPTROLLER'S OFFICE, *May* 2*d*, 1860.

68 *Statement of differences.*

Bal. found due the United States, per this adjustment	4,247 74
Bal. admitted by the marshal as due the U. S., per his acc. current	3,008 56
Showing a difference of ..... Dollars	1,239 18

Arising thus:

October term, 1859.

Item 1.	Ab. No. 3. Am't paid John Youngberry susp'd; his name is not on order of court	7 00
" 2.	Ab. 3. Am't paid Jonas Marks susp'd for explanation as to the genuineness of the signature. In another place on same abstract he signs by × mark	18 30
" 3.	Ab. No. 4, vou. 1. Charge for attendance before court susp'd until the dates on which the marshal was actually present are given. Judge Drummond states, "Mr. Pine was absent most of the time claimed."	275 00
" 4.	Vou. 3. Second charge for mileage to Ottawa to serve subpœnas dated Dec. 15th, disallowed	5 40
" 5.	U. S. *vs.* P. A. J. Smith, error in calculation of mileage to Galesburg disall'd. 168 miles at 6 c. is $10 08 instead of $10 80, as charged	72
" 6.	U. S. *vs.* Thomas Kennedy, charges for mileage to Galesburg to serve subpœna dated Oct. 21st, disall'd. All'd mileage to same place on sub. of same date in case Smith, and the witness' names should all have been in one writ	10 80
" 7.	Vou. Fees in post office cases disall'd in this acc., and referred to the Sixth Auditor for settlement	32 54
" 8.	Ab. No. 5, vou 2. Am't paid for sending prisoner home disall'd; there is no law authorizing this charge	4 85
" 9.	Ab. No. 6, vou. 8 & 9. Meals for jurors susp'd for order of court	30 00
" 10.	Commissions more than all'd	44

December term, 1859.

" 11.	Ab. No. 4, vou. 1. Charge for attendance at court susp'd; same reason as item 3	240 00
" 12.	Vou. 2. U. S. *vs.* Dennis McCarthy susp'd for charge for service of 3 warrants Jan'y 21, disallowed, defendants being already in custody, until names of parties are given	6 00
	Am't carried forward	601 05
		601 05
69	Am't bro't forward	
Item 11.	Vou. 3. Second charge for mileage to Ottowa on subpœna, dated 22d Dec., disall'd	5 10
" 12.	U. S. *vs.* Joseph Stout, mileage of self, while transporting prisoner disall'd; all'd mileage for same journey in the case *vs.* John Hossack	8 50

Item 13. U. S. *vs.* James Stout mileage of self, while transporting prisoner disall'd; same reason as last item		8 50
" 14. Fees in suits on post office bonds detached, and referred to Sixth Auditor		19 66
" 15. Am't of suspensions still outstanding, or rather again suspended, the explanation not being sufficient, as per abstract herewith marked ×		829 05
		1,471 86
Cr. Oct. T. 1859. Ab. No. 3. Error in addition of abstract	8 00	
Dec. T. 1859. Commission not charged by marshal ab. amt's to $5 11, not $5 03, as chg'd	4 80	12 80
Showing a difference of ..... Dollars		$1,459 06
Amount of foregoing differences brought up		$1,459 06
Add the following:		
16. Ab. 4, vou. 2. Oct. term, charge is made for serving subpœna on 9 witnesses for grand jury in Galesburg, only 8 names given		50
17. Ab. 4, vou. 2. Dec. term, charge is made for serving sub. on 8 wit's, in case *vs.* McCarthy, only 7 names given. Whitney Frank is named twice.		50
		$1,460 06
Deduct amount of warrant in favor of the treasurer, credited to the marshal in above statement of his acc		220 88
Amended difference		$1,239 18

70 *The United States in account current with C. N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States circuit and dist. courts held at Chicago, October term,* 1859.

DR.

To compensation of grand jurors	Abstract	No. 1	$293 50
" " petit jurors	"	" 2	2,223 95
" " witnesses	"	" 3	503 00
" " marshal	"	" 4	605 80
To jailer's fees and expenses of supporting prisoners, &c	"	" 5	6 60
To contingent expenses of court	"	" 6	265 87
To supplemental	"	" 7	.... ..

To marshal's commissions on above, less amount of abstract No. 4, at 2 per cent	65 85
To ballance	4,903 73
	$8,868 30

CR.

By draft No. 1102, dated November 9, 1859, on	$2,500 00
By balance due the U. S., as per acc't current of July and adj'd July terms	4,959 47
By amount of suspended items as per report No. 11036	1,177 35
" " " 11615	231 48
	$8,868 30
Balance due the U. S. Dec. 19, A. D. 1859	$4,903 73

NORTHERN DISTRICT OF ILLINOIS, *ss:*

C. N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered, as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper, and were paid in good faith; and that all the items charged are correct and legal, the amounts thereof justly due to him as therein stated as he verily believes.

C. N. PINE.

Subscribed and sworn to this sixteenth day of March, in the year eighteen hundred and sixty, before me.

FRED. W. COLE,
U. S. Com. Nor. Dist. Ill.

71 *The United States in account current with C. N. Pine, U. S. marshal for the northern district of Illinois, for expenses of the United States circuit and dist. courts held at Chicago, December term,* 1859.

DR.

To compensation of grand jurors	Abstract No. 1	.... ..
" " petit jurors	" " 2	.... ..
" " witnesses	" " 3	$240 10
" " marshal	" " 4	532 46
To jailer's fees and expenses of supporting prisoners, &c	" " 5	.... ..
To contingent expenses of court	" " 6	.... ..

To supplemental ..... Abstract No. 7	.... ..
To marshal's commissions on the above, less amount of abstract No. 4, at two per cent	.... ..
To items from suspended report 11615, recharged	908 49
" " " 11036, do.	214 12
To balance	3,008 56
	$4,903 73

Cr.

By balance due, as per October acc't current	$4,903 73
	$4,903 73
Balance due the U. S. February 13, 1859	$3,008 56

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered, as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper, and were paid in good faith, and that all the items charged are correct and legal, the amounts thereof justly due to him as therein stated, as he verily believes.

C. N. PINE.

Subscribed and sworn to this sixteenth day of March, in the year eighteen hundred and sixty, before me.

FRED. W. COLE,
U. S. Com. Nor. Dis. Ill.

72 A.

CHICAGO, *March* 16, 1860.

Hon. T. L. SMITH:

SIR: In forwarding the term ac't for October and December, I omitted to enclose the items recharged from suspended act's. Herewith please find them. Resp'l'y yours,

C. N. PINE, *U. S. M.*
Pr. S. T. HOSMER, *Deputy.*

B.

Items suspended in report No. 11036, and now recharged with explanations.

Item 1. Certificate of clerk of court, showing that court was in session Dec. 25 and Jan'y 1st	10 00
" 4. Nature of debt, post office bond; names, W. A. Ford, Albert Butts; place of service, Yellow Creek	13 00

Item	7.	Charged in accordance with acts of Feb'y 26th, 1853, (10 stat., 164) (These were each for different parties.)	36 40
"	9.	Names of parties, W. Frizzell, J. McEmery, D. W. Stewart, H. H. Fairbaugh	12 92
"	11.	Clerical error, should have been Saturday, M'ch 5	4 00
"	12.	2½ days' board at hotel at Rock Island	4 00
"	14.	Same as item 7	21 00
"	15.	These were seperate and distinct cases, and subpœnas were issued as charged	3 44
"	16.	Names of witnesses: E. A. Cook, J. Bechard, J. Williams, H. D. Ward, J. B. Durlas, E. Davis, R. N. Pollock, H. Strong	7 60
"	17.	Same as item 7	21 00
"	18.	Names of witnesses: E. A. Cook, H. Strong, J. Williams, H. D. Ward, R. N. Pollock, E. Davis	4 80
"	20.	Should be Sam'l Caruthers; place of service, *Klin Oak;* cause of action, converting to his own use money belonging to the U. S.	8 80
"	21.	Mileage to sieze H. M. Evans, not Jesse Lombard, at Lyons, Ia., 137 miles	8 22
"	22.	Place of service, Galesburg	10 80
"	23.	" " "	10 80
"	24.	" " "	10 80
"	25.	" " "	10 80
"	26.	" " "	10 80
"	27.	Same as item 7	12 00
"	31.	Bill certified by Judge Drummond as necessary for the use of the court	48 71
"	32.	Certificate of the judge that the supplies were furnished the jury by his order in chambers, was forwarded to the department	39 00
"	35.	Same as item 1	4 00
"	36.	Place of service, Palatine	7 28
"	37.	Rule of court requiring Wm. Linn to return executions in his possession, issued by this court	22 80
73		Item 38. Service, 3 miles from Princeton, Bureau county	6 72
Item	39.	Nature of contempt, refusal to obey summons of court; he plead inability to obey on account of poverty, and was discharged; place of service, Cambridge, Henry co., Ill.	43 06
"	41.	Same as item 31	38 50
"	42.	These fees were disallowed by the judge at the Oct. term, but were afterward recharged and certified by the judge.	216 00
"	43.	Nature of debt, post office bond	9 90
"	44.	" " same as above	9 48
"	45.	Same as item 7	8 64
"	46.	Do	8 64

Item 47.	Same as item 7	10 92
" 48.	Do	18 20
" 49.	Same as item 32	18 00
" 50.	Do	6 00
" 52.	Same as item 7	18 00
" 53.	Clerical error, should be Feb'y 14	2 00
" 54.	Two subpœnas were issued	1 00
" 56.	Same as item 7	10 92
" 58.	This was a seperate bill for wood bought afterwards, and its correctness certified by the judge	48 75
" 59.	Same as item 7	9 84
" 61.	Brackett was arrested on May 18, and transported to Chicago as charged, but from an error in the indictment was discharged, another jury summoned, a new bill found, and he was arrested by another writ	29 28
" 62.	Same as item 7	10 92
" 63.	Do	10 92
" 64.	Do	10 92
" 65.	Do	10 92
	Commissions on items recharged	7 99
		$908 49

74 C.

Items suspended in report No. 11615, and now recharged with explanations :

Item 3.	Charged in accordance with act of Feb'y 26, 1853, (10 stat., 164)	16 80
" 6.	This was a subpœna issued for witnesses, John Beatty and Wm. Desplain, and served Aug. 9	11 08
" 7.	Same as item 3	18 20
" 8.	"	18 20
" 9.	Nature of debt, post office bond	14 92
" 10.	" "	7 70
" 11.	" "	9 48
" 12.	This execution was issued on a judgement obtained *vs.* Pepper, and a copy of the execution forwarded to the department. The affidavit of the printer was filed with the ex. in court	39 50
" 13.	Certificate of the judge that supplies were furnished the jury at his order in chambers, was forwarded to the department	18 00
" 15.	Same as item 3	10 92
" 17.	Same explanation as in item 61, to report 11036	49 32
		$214 12

75 E.

Statement of suspensions, per report No. 11036 *and* 11615, *now allowed.*

11036.

1.	Charge for attendance Dec. 25 and Jan'y 1	$10 00
9.	Charge for serving subpœnas on 4 persons	12 92
11.	Charge for attendance of Dougherty March 5	2 00
12.	U. S. *vs.* Thales Lindsley, expenses while making arrest	4 00
15.	Charge for summoning witnesses	3 44
16.	Charge for summoning witnesses in case B. Williams	7 60
18.	Charge for summoning 6 witnesses	4 80
20.	U. S. *vs.* S. Caruthers, fees susp'd for cause of action now all'd	8 80
22.	U. S. *vs.* Wm. Despain, mileage to serve on Ira Baker	10 80
27.	Am't paid bailiffs for Dec. 25 and Jan'y 1	12 00
35.	Am't paid H. B. Ruger for attendance Dec. 25 and Jan'y 1	4 00
36.	U. S. *vs.* D. Martin, charge for mileage	7 28
37.	U. S. *vs.* Wm. Linn *et al.*, fees in this case	22 80
38.	U. S. *vs.* George A. Williams, charge for travel	6 72
39.	U. S. *vs.* Andrew Weslake, fees in this case	43 06
53.	U. S. *vs.* H. Roberts, attendance of dep't Pollock	2 00
61.	U. S. *vs.* J. M. Brackett, mileage to serve warrant	29 28

11615.

6.	U. S. *vs.* Thomas Kennedy, fees for summoning witnesses	11 08
17.	U. S. *vs.* Joseph Brackett, fees in this case	49 32
	Commissions on item 27 and 35, at 2 per cent.	32
	Carried over	$200 14

LEWIS JORDAN.

TREASURY DEPARTMENT,
First Auditor's Office, March 27, 1860.

Amount of foregoing allowances brought over							$200 14
Add the following:							
Report 11036,	item 26,	mileage on the subpœna					10 80
"	"	"	32,	refreshments for jury		39 00	
"	"	"	49,	"	"	18 00	
"	"	"	50,	"	"	6 00	
"	11615	"	13,	"	"	18 00	
							81 00
Commission on $81, at 2 per cent.							1 62
Allowed							$293 56

JAMES AULD.

COMPTROLLER'S OFFICE, *May 2d*, 1860.

76 X.

Suspensions and disallowances made, per reports No. 11036 *and* 11615.—*Account of C. N. Pine, U. S. marshal, recharged by him, and now again rejected.*

REPORT NO. 11036.

Account for December term, 1858.

Item	4.	U. S. *vs.* S. R. Matthews *et als.*, fees in this cause disallowed in this ac. Being a post office suit, a seperate ac. should be rendered to the Auditor for the P. O. Department	13 00
"	7.	U. S. *vs.* Jeff. Williams and W. Kerns, mileage of self and gaurd, (Wm. Frizzell,) transporting Kerns to Chicago, disallowed. Allowed the same mileage for transporting other prisoners at the same time	36 40
"	11.	U. S. *vs.* J. Buland, attendance of deputy Boyer before commissioner, March 5, disallowed. Allowed for same day in court	2 00
"	14.	U. S. *vs.* W. Taylor, mileage of self transporting prisoner disallowed, for same reason as item 7	21 00
"	17.	U. S. *vs.* H. Roberts, mileage tranporting prisoners disall'd; same as item 7	21 00
"	21.	U. S. *vs.* J. R. Belleville, mileage to serve subpœna on Jesse Lombard at Lyons, Indiana, suspended, until a copy of the subpœna, duly certified, is furnished	8 22
		Mileage to serve subpœnas, dated January 8, on following witnesses in Galesburg, disallowed. The same mileage is allowed on one subpœna of that date, and the names of all the witnesses should have been in one writ, as prescribed in the act of Feb. 26, 1853, viz:	
"	23.	H. C. Foot and T. H. True	10 80
"	24.	Ira Cotton, J. T. Burnett, and G. C. Lanphin	10 80
"	25.	F. P. Sisson, L. W. Mitchel, and Wm. Ogden	10 80
"	31.	Ab. 6, vou. 10 and 11. Amount paid for stores suspended for approval of Secretary of the Interior	48 71

Account for March term, 1859.

"	37.	Mileage to serve rule of court on William Linn, requiring return of executions in his possession, suspended for explanation. Was Linn a deputy marshal?	22 80
"	41.	Ab. 6, vou. 11. Bill for 3 stores and fixtures suspended for authority from Sec'y of Interior	38 50
"	42.	Ab. 6, vou. 12. Am't paid 2 bailiffs disallowed. Five were paid by the marshal, but only 3 were approved by the judge	216 00

Account for May term, 1859.

Item 43. U. S. *vs.* R. J. Hanna *et al.*, post office suit, fees disallowed; see item 4 ..... 9 90

77

" 44. U. S. *vs.* J. F. Snow *et al.*, same as item 43 .... 9 48

" 45. U. S. *vs.* H. Collar, mileage to Galra on sub. for E. Davis, disallowed. Allowed for same travel on another sub. of same date 8 64

" 46. U. S. *vs.* A. Remington, mileage to Galra on sub. for Babwik and Ward disallowed; same reason as item 45 ..... 8 64

" 47. U. S. *vs.* P. Millard, mileage on sub. disallowed; same reason as item 45 ..... 10 92

" 48. Mileage of self transporting Wm. Kerns disallowed, same travel allowed in case *vs.* Sears, and both transported at same time 18 20

Account for December term, 1858.

" 52. U. S. *vs.* Collar and Williams, mileage of self (Pollock) from Galesburg to Chicago disallowed, being same travel as made on removal of Johnson, Remington, and others 18 00

" 54. U. S. *vs.* Crowe, serving sub. for grand jury on C. B. Smith and J. Conno charged twice; 2d charge disallowed 1 00

" 56. U. S. *vs.* Sears, mileage to Rock Island to subpœna Lindsley Day, and Frizzell disallowed, being same travel as allowed in case *vs.* Hartel. 10 92

Account for March term, 1859.

" 58. Ab. 6, vou. 7. Bill of J. McMahon for 5 cords hickory wood, and 2½ cords oak, and for cutting, splitting, and delivering same, disallowed. The same was charged and allowed in ac. for December term 48 75

Account for May term.

" 59. U. S. *vs.* A. Remington, mileage to Victoria to subpœna H. Strong and E. A Cook disallowed. The same travel is allowed on sub. to Galesburg in case *vs.* Roberts 9 84

" 61. U. S. *vs.* J. N. Brackett, mileage to serve warrant of May 24 and mileage of prisoner suspended, until it is shown that the travel was actually performed. Def't was arrested May 18, and transported to Chicago, and it must be shown that this second warrant was served at Rock Island 29 28

Item 62.	Mileage to sub. Fairclough and McEmery (case *vs.* Brackett) disallowed, being same travel as allowed for witnesses in case *vs.* G. Stanley	10	92
" 63.	U. S. *vs.* H. Coleman, mileage for going to arrest disallowed, as no arrest was made; mileage will be allowed to reimburse a marshal when travel is actually made for the sole purpose of arresting a party, even when the arrest is not effected, but not in a case like this, where several mileages have been allowed for the same trip on other writs issued at the same time	10	92
" 64.	U. S. *vs.* Carson, mileage disallowed; same reason as in last above item	10	92
" 65.	U. S. *vs.* W. Halers, mileage disallowed; same reason as in last above item	10	92
	Commissions recharged $7 99, allowed $1 58; outstanding	6	41
		693	69

78 REPORT No. 11615.

Account for July term, 1859.

Item 3.	U. S. *vs.* George Smith, mileage of self transporting prisoners disallowed. Allowed for same travel while transporting G. Smith at same time	16	80
" 7.	U. S. *vs.* P. Millard, mileage transporting prisoners disall'd. Allowed for same, transporting Bracket at same time	18	20
" 8.	U. S. *vs.* Hartel, mileage transporting prisoner disallowed. Allowed for same, transporting Bracket at same time	18	20
	Fees in the following post office suits, disallowed in this account. For these a seperate account should be rendered to the Auditor for the Post Office Department:		
" 9.	U. S. *vs.* L. M. Webber *et al*	14	92
" 10.	U. S. *vs.* S. M. Preston	7	70
" 11.	U. S. *vs.* Jno. F. Snow	9	48
" 12.	U. S. *vs.* John C. Pepper *et al.*, fees on service of execution, &c., suspended for explanation as to cause of action	39	50
" 16.	U. S. *vs.* H. Coleman, mileage, endeavoring to arrest, (without success,) disallowed. Allowed for same journey on several other writs issued at same time	10	92
		$829	41

Less com's on item 13, not recharged by mar., but allowed per rep. No. 12093 36

$829 05

79 No. 12675. TREASURY DEPARTMENT,
First Auditor's Office, August 25, 1860.

I hereby certify that I have examined and adjusted an account between the United States and Charles N. Pine, late marshal for the northern district of Illinois, and find that he is chargeable—

To balance due from him, per report No. 12093 ..... $4,247 74
" commissions heretofore allowed in the adjustment of his accounts, now recharged, as forfeited under act 3d March, 1797, viz:
Per report No. 9712 ..... $25 60
" " " 10190 ..... 76 04
" " " 11036 ..... 187 07
" " " 11615 ..... 62 24
" " " 12093 ..... 72 15
423 10

Am't heretofore allowed, per report 11615, for so much paid to Michael Fitzgerrald for wood, Sept. 25, 1859, now recharged; Judge Drummond having certified that the quantity of wood charged was not furnished for the use of the U. S. courts, as per note on ab. 6, ac. for Dec'r term, 1859; report No. 12583 in ac. of Thomas Hoyne 250 12

Dollars 4,920 96

I also find that the balance due the United States amounts to $4,920 96

Dollars 4,920 96

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

$———. D. W. MAHON,
Acting First Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance this 29 day of August, 1860.

W. MEDILL,
Comptroller.

To the REGISTER OF THE TREASURY.

Charles N. Pine, late marshal for the northern district of Illinois, in account with the United States.

80 DR.

To balance due from him, per report No. 12093		4,247 74
" commissions heretofore allowed to him on the respective adjustments of his accounts forfeited by the act of 3d March, 1797, vol. 1st, page 512, and now recharged to him, viz :		
Report No. 9712	25 60	
" " 10190	76 04	
" " 11036	187 07	
" " 11615	62 24	
" " 12093 $70 21 + 32 + 1 62	72 15	
		423 10
Amount heretofore allowed, per report No. 11615, on vou. 8, of ab. 6, July and July adjourned terms, 1859, for so much paid to Michael Fitzgerrald for wood, Sept. 25, 1859, as alleged, now recharged, Judge Drummond having certified that the quantity of wood charged was not furnished for the use of the U. S. courts. See note on ab. 6, ac. for Dec. term, 1859, report No. 12583, ac. of Thomas Hoyne; (the am't of commissions all'd included in item of $62 24 above)		250 12
	Dollars	4,920 96

Interest to be computed on $4,247 74 from date of last advance, 9 Nov., 1859.

For detailed statement of differences, see accompanying paper herewith, marked F.

CR.

By balance due the United States	$4,920 96

THAD. STURGIS.

FIRST AUDITOR'S OFFICE, *Aug't* 25, 1860.

JOHN BEDEL.

TREASURY DEPARTMENT,
Comptroller's Office, Aug. 29, 1860.

F.

81 Report No. ———.

Detailed statement of differences.

Balance due the U. S., per this adjustment	$4,920 96
Balance admitted by the marshal due the U. S. per his last acc. current rendered	3,008 56
Making this difference	1,912 40

Arising thus:

OUTSTANDING DIFFERENCES, PER REPORT NO. 11036.

December term, 1858.

Item 4.	Ab. 4, vo. 2. U. S. *vs.* Sam'l R. Matthews *et al.*, charge for serving process and mileage on same suspended for further explanation as to nature of debt, and also for names, on whom and when served. This being a P. O. case, was subsequently disallowed, per rep. 12093, with directions to make out a seperate account and send it to the Auditor of the P. O. Department	$13 00
" 7.	Do. U. S. *vs.* Jeff. Williams and Wm. Kerns, charge for mileage of self and Wm. Frizzell as guard, disallowed, as they are both allowed mileage in previous case on same day and from same place	36 40
" 11.	Do. U. S. *vs.* I. Buland, charge for attendance of Dougherty and Boyer before comr., Sunday Mar. 6, suspended until the necessity of attendance on that day is shown, $4 00. On explanation that this was error for Mar. 5, $2 00 was allowed for Dougherty, and charge for Boyer disallowed, having been all'd for attendance on c't that day	2 00
" 14.	Do. U. S. *vs.* Wm. Taylor, charge for mileage of self while transporting prisoner disallowed, for same reason as item 7	21 00
" 17.	Do. U. S. *vs.* Hugh Roberts, charge for mileage of self while transporting prisoner disallowed, for same reason as item 7	21 00
" 21.	Do. U. S. *vs.* J. R. Belleville, charge for mileage to serve subpœna on Jesse Lombard, suspended for place where service was made. Upon explanation that service was made at Lyons, Indiana, out of his district, it was again suspended, per rep. 12093, until a copy of the subpœna, duly certified, is furnished	8 22

Item 23. Do. U. S. *vs.* Wm. Despain, charge for mileage to serve subpœna on H. C. Foot and T. H. True, suspended for place of service..... $10 80

" 24. Do. U. S. *vs.* Wm. Despain, charge for mileage to serve usbpœna on Ira Colton, I. T. Burnett, and G. C. Lamphen, suspended for place of service..... 10 80

" 25. Do. U. S. *vs.* Wm. Despain, charge of mileage to serve subpœna on F. P. Sisson, L. W. 82 Mitchel, and Wm. Ogden, suspended for place of service..... 10 80

On explanation that these subpœnas were dated Jan'y 8, and served at Galesburg, the charges in the three last items were *disallowed*, per rep. No. 12093, the marshal having been allowed mileage on one subpœna of that date, served at same place, which should have included the names of the above witnesses, as prescribed in act of Feb'y 26, 1853.

Item 31. Abst. 6, vos. 10 and 11. Am't paid for stores suspended for want of approval of the Sec'y Interior..... 48 71

March term, 1859.

" 37. Abst. 4, vou. 12. U. S. *vs.* Wm. Linn *et al.*, fees in this case suspended till cause of action is more fully shown. On explanation that this was for mileage to serve rule on Wm. Linn, requiring him to return execution in his possession, these fees were further suspended, per rep. 12093, for additional explanations. Was Linn a deputy marshal?..... 22 80

" 41. Abst. 6. vo. 11. Bill for three stores and fixtures suspended for want of authority from Sec'y of Interior..... 38 50

" 42. Do. vo. 12. Am't paid bailiff at Oct. T., 1858, disallowed, per rep. No. 10190, re-charged and again disallowed, the judge having refused to sanction the payment..... 216 00

May term, 1859.

" 43. Abst. 4, vou. 2. U. S. *vs.* Rich'd J. Hanna *et al.*, suspended fees until nature of debt is shown. On explanation that this was post office suit, the am't was disallowed, per rep. 12093; same as item 4..... 9 90

" 44. Do. U. S. *vs.* John F. Snow *et al.*, fees suspended as in last item. On similar explanation the am't was disallowed; same as item 4..... 9 48

Item 45. Do. vo. 3. U. S. *vs.* Harrison Collar, charge for mileage to Galra on subpœna for E. Davis, disall'd, as marshal is allowed herein for mileage to same place and on same date, in case Perie G. Williams 8 64

" 46. Do. U. S. *vs.* Alonzo Remington, charge for mileage to Galra, to sub. Babcock & Ward, disallowed, as item 45 ..... 8 64

" 47. Do. U. S. *vs.* Price Willard, charge for mileage on subpœna disallowed, as item 45 ..... 10 92

" 48. Do. U. S. *vs.* Wm. Kearns, charge for mileage of self while transporting prisoner, disallowed. All'd for same day in case *vs.* David B. Sears. 18 20

83 *December term*, 1858.

Item 52. Abst. 4, vou. 2. U. S. *vs.* Collar & Williams, charge for mileage of self (or Pollock) from Galesburg to Chicago disallowed, being same travel as made in removal of Johnson, Remington, and others 18 00

" 54. Do. U. S. *vs.* Crowe, charge for serving subpœna for grand jury on C. B. Smith and J. Cours, charged twice; 2d charge disallowed .. 1 00

" 56. Do. U. S. *vs.* Sears, charge for mileage to Rock Island, to subpœna Lindsley, Day & Frizzell, disall'd., being same travel as all'd in case *vs.* Hartel 10 92

March term, 1859.

" 58. Abst. 6, vo. 7. Bill of J. McMahon for 5 carts hickory wood and 2½ cords oak, and for cutting, splitting, and delivering same, disallowed; the same was charged and all'd in ac. for Dec. term 48 75

May term, 1859.

" 59. Abst. 4, vou. 3. U. S. *vs.* A. Remington, charge for mileage to Victoria, to subpœna H. Strong and E. A. Cook, disallowed; the same travel is allowed on subpœna to Galesburg in case of H. Roberts 9 84

" 61. Do. U. S. *vs.* J. M. Brackett, charge for mileage to serve warrant of May 24, and mileage of prisoner, suspended for explanation. Deft. was arrested May 18, and transported to Chicago. Did he escape and get back to Rock Island? On explanation that owing to

defect in indictment the party was discharged on first arrest and re-arrested on new warrant under a second indictment, the charge was further suspended, per rep. 12093, until it is shown that the travel was actually performed. The deft. was arrested May 18, and transported to Chicago, and it must be shown that he had returned to Rock Island, and that this second warrant was served at Rock Island··· 29 28

Item 62. Do. Charge for mileage to subpœna Fairclough and Mr. Ewing (in case *vs.* Bracket) disallowed, being same travel as allowed for witnesses in case *vs.* Greer Stanley····· 10 92

" 63. Do. U. S. *vs.* H. Coleman, charge for mileage for going to arrest disallowed, as no arrest was made; mileage will be allowed to reimburse a marshal when travel is actually made for the sole purpose of arresting a party, even when the arrest is not made or effected, but not in a case like this, where several mileages have been allowed for the same trip on other writs issued at the same time····· 10 92

" 64. Do. U. S. *vs.* A. Carson, mileage disallowed; same reason as last item····· 10 92

" 65. Do. U. S. *vs.* W. Haley, mileage disallowed; same reason as item 63····· 10 92

84 Aggregate of commissions suspended per rep. No. 12093:

December ac. current·····$3 86		
March ac. current····· 7 33		
May ac. current····· 47		
	$11 66	
Less commissions all'd per rep. No. 12093 on items 27, 32, 35, 49, and 50·····$1 58		
Abandoned by marshal on items No. 28, 29, 30, 33, 34, and 40. 3 06		
Error of marshal in computing com's on abandoned items at $3 67 instead of $3 06, as above specified····· ····· 61		
	5 25	
		6 41
Aggregate outstanding diff., per rep. No. 11036·····		$693 69

OUTSTANNING DIFFERENCES, PER REP. NO. 11615.

July term, 1859.

Item 3. Abst. 4, vo. 2. U. S. *vs.* Geo. Smith, charge for mileage of self while trans-

	porting" prisoner disallowed. All'd for same day and from same place in case *vs.* Francis M. Smith.....	16	80
Item 7.	Do. vo. 3. U. S. *vs.* P. Millard, charge for mileage while transporting prisoner disallowed. All'd for same day and same place in case of Bracket.....	18	20
" 8.	Do. U. S. *vs.* Jno. Hartel, like charge as last item; disallowed for same reason.....	18	20
" 9.	Do. vo. 4. U. S. *vs.* Lewis M. Webber *et al.*, fees in this case suspended for the nature of the debt. On explanation that this was P. O. suit, the am't was disallowed, per rep. No. 12093, with direction to send seperate ac. to the Auditor of the P. O. Department..	14	92
" 10.	Do. U. S. *vs.* S. M. Preston, fees in this case suspended for same reason as in item 9, and subsequently disallowed in rep. 12,093 for same reason.....	7	70
" 11.	Do. U. S. *vs.* Jno. F. Snow, fees in this case suspended for same reason as in item 9, and subsequently disallowed on rep. 12093, for same reason.....	9	48
" 12.	Do. U. S. *vs.* Jno. C. Pepper *et al.*, fees in this case suspended until the marshal shows for what the execution was issued. The charge for printing must also be made out in conformity with the fee bill, and accompanied by the affidavit of the publisher as to the number of insertions; also nature of report to court, explanations submitted, did not meet the exceptions taken to this item, and it was again rejected for explanation, per rep. 12093.....	39	50
" 16.	Do. vo. 3. U. S. *vs.* Henry Coleman, charge of milage for going to arrest disallowed, as in last adjustment.....	10	92
		$135	72
	Less commissions allowed by report No. 12093, not recharged in the marshal's account, item 13.....		36
	Aggregate outstanding, per report No. 11615..		$135 36

OUTSTANDING DIFFERENCES, PER REPORT No. 12093.

October term, 1859.

Item 1.	Abs't 3. Am't paid John Youngberry suspended, his name not on the order of court	7 00
" 2.	Do. am't paid Jonas Marks, suspended for explanation as to genuineness of signature; in another place on same abs't he signs by + his mark	18 30
" 3.	Abs't 4, vo. 1. Charge for attendance before court, suspended until the dates on which the marshal was actually present, are given. Judge Drummond states, "Mr. Pine was absent most of the time claimed"	275 00
" 4.	Do., vo. 3. Second charge for mileage to Ottawa to serve subpœna, dated Dec. 15, dis.	5 40
" 5.	Do. U. S. *vs.* P. A. J. Smith, error in calculation of mileage to Galesburg disallowed, 168 miles at 6 c. is $10 08 instead of $10 80, charged	72
" 6.	Do. U. S. *vs.* Thomas Kennedy, charge for milage to Galesburg to serve subpœna, dated Oct. 21, disallowed; allowed mileage to same place on sub., of same date, in case *vs.* Smith, and the witnesses' names should all have been in one writ	10 80
" 7.	Do., vo. 4. Fees in post office cases disallowed in this account, and referred to the 6th Auditor for settlement	32 54
" 8.	Abs't 5, vo. 2. Am't paid for sending prisoners home disallowed; there is no law authorizing this charge	4 85
	Commissions more than allowed	44

December term, 1859.

" 9.	Abs't 4, vo. 1. Charge for attendance at court suspended; same reason 86 at item 3	240 00
" 10.	Do., vo. 2. U. S. *vs.* Dennis McCarthy, charge for service of 3 warrants, Jan'y 21, disallowed; def't being already in custody	6 00

Item 11.	Do., vo. 3. Second charge for mileage to Ottawa on subpœna, dated 22 Dec., disallowed		5 10
" 12.	Do. U. S. *vs.* Joseph Stout, charge for mileage for self, while transporting prisoner, disallowed; allowed mileage for same journey in the case of Jno. Hossack		8 50
" 13.	Do. U. S. *vs.* James Stout, charge for mileage for self, while transporting prisoner, disallowed; same reason as item 12		8 50
" 14.	Do., vo. 4. Fees in suits on post office bonds detached and referred to 6th Auditor		19 66
" 15.	Am't of suspensions still outstanding. See details under head of reports Nos. 11036 and 11615		
" 16.	Abs't 4, vo 2. Oct. term, charge is made for serving sub. on 9 witnesses for grand jury in Galesburg, only 8 names given, sus.		50
" 17.	Abs't 4, vo. 2. Dec. term, charge is made for serving sub. on 8 witnesses in case *vs.* McCarthey, only 7 names given, (Whitney Frank is named twice,) sus.		50
			643 81
	From which deduct the following credit differences :		
	October term, 1859. Abs't No. 3, error in addition of abstract; abs't amounts to $571 00, and not $503, as ch'g'd	$8 00	
	Dec. term. Commissions allowed not charged by marshal	4 80	
	Warrants in favor of the treasurer for balance of salary credit to the marshal in adjustment of his accounts	220 88	
			233 68
	Aggregate outstanding diff., per rep. No. 12093		$410 13

To which add differences now made, being am't of items recharged in present statement, as follows :		
Commissions heretofore allowed him on the respective adjustments of his accounts forfeited by virtue of act of 3d March, 1797, vol. 1, page 512, now recharged to him, viz :		
Rep. No. 9712	25 60	
" 10190	76 04	
" 11036	187 07	
" 11615	62 24	
" 12093 $70 21 + 32 + 1 62	72 15	
Am't heretofore allowed, per rep. No. 11615, on vo. No. 8 of abs't 6, July and July adjourned terms, 1859, for so much paid to Michael Fitzgerrald for wood, Sept. 25, 1859, as alledged, now recharged. Judge Drummond having certified that the quantity of wood charged was not furnished for the use of the U. S. courts. See note on abs't 6 acc. of Dec. term, 1859, rep. No. 12588 in acc. of Thomas Hoyne, (the am't of commissions allowed included in item of $62 24, above).	250 12	673 22
Differences as above detailed		$1,912 40

88 *No.* 8507.—*Treasury warrant No.* 7632.

$3,740 00.
Interior.

TREASURY OF THE UNITED STATES,
Washington, September 23d, 1858.

At sight, pay to Charles N. Pine, U. S. marshal or order, three thousand seven hundred and forty dollars.

SAM. CASEY,
Treasurer of the United States.

M. SCHOEFFLER,
Coll., Milwaukie.

No. 8057. Registered Sept. 23rd, 1858, ($3,740.)
F. BIGGER,
Register of the Treasurer.

Endorsed: Charles N. Pine, U. S. marshal, northern dist. Illinois.

Treasury interrior warrant.

TREASURY DEPARTMENT, *P. C.*

Interior.
No. 7632.
Appropriation.
Exp's of courts of U. S.

To the Treasurer of the United States, greeting: Pay to Charles N. Pine, U. S. marshal for the northern dist. of Illinois, or order, out of the appropriation named in the margin, three thousand seven hundred and forty dollars on account of his expenditures.

And for which sum, the said Charles N. Pine is to be charged and held accountable. For so doing, this shall be your warrant.

Given under my hand and the seal of the treasury, this twenty-first day of September, in the year one thousand eight hundred and fifty-eight, and of independence the 83d.

[SEAL.]

HOWELL COBB,
Secretary of the Treasury.

W. H. W.
$3,740.
J. C. M.
Recorded, 22.

R. & E, 22.
Countersigned:

W. MEDILL, *Comptroller.*
F. BIGGER, *Register.*

Df't on B. F. Strother.

CHICAGO, *Ill's.*

Received for the above warrant draft No. 8057, on M. Schoeffler, coll., Milwaukie, ($3,740.)

J. C. H.

89 No. 8169. *Treasury warrant No.* 7736.

Interior. $8,000.

TREASURY OF THE UNITED STATES,

Washington, September 30, 1858.

At sight, pay to C. N. Pine, U. S. mar'l for nor d't Illinois, or order, eight thousand dollars.

SAM. CASEY,
Treasurer of the United States.

M. T. SCHOEFFLER,
Coll., Milwaukie.

No. 8169. Registered Sept. 30, 1858, ($8,000.)

F. BIGGER,
Register of the Treasury.

Endorsed: C. N. Pine, U. S. marshal, north. dist., Ill.

Treasury interior warrant.

TREASURY DEPARTMENT, *P. C.*

Interior. No. 7,736. Appropriation. Exp's of courts of U. S.

To the Treasurer of the United States, greeting: Pay to C. N. Pine, marshal for north'n dist. of Illinois, or order, out of the appropriation named in the margin, eight thousand dollars on acc't of his expenditures.

And for which sum the said C. N. Pine is to be charged and held accountable. For so doing, this shall be your warrant.

Given under my hand and the seal of the treasury, this twenty-ninth day of September, in the year one thousand eight hundred and fifty-eight, and of independence the 83d.

[SEAL.]

HOWELL COBB,
Secretary of the Treasury.

W. H. W.
$8,000.
J. C. M.
Recorded, 30.
Chicago, Ill.

R. & E., 30.
Countersigned:

W. MEDILL, *Comptroller.*
F. BIGGER, *Register.*

Received for the above warrant draft No. 8169, on M. T. Schoeffler, coll., Milwaukie, $8,000.

J. C. H.

90 No. 9737.—*Treasury warrant No.* 9285.

$7,219 20.

Interior.

TREASURY OF THE UNITED STATES,

Washington, April 5th, 1859.

At sight, pay to C. N. Pine, U. S. marshal, or order, seven thousand two hundred and nineteen dollars $\frac{20}{100}$.

SAM. CASEY,
Treasurer of the United States.

ASS'T TR. U. S., *New York.*

No. 9,737. Registered April 5th, 1859, $7,219\frac{20}{100}$.

F. BIGGER,
Register of the Treasury.

Endorsed: C. N. Pine, U. S. marshal. Pay Geo. J. Serrey, cas., or order. Edward J. Tinkham, cas.
Received payment.

GEO. J. SERREY, *Cas.*

Treasury interior warrant.

TREASURY DEPARTMENT, *P. C.*

Interior. No. 9285. Appropriation. Exp's of courts of U. S.

To the Treasurer of the United States, greeting: Pay to C. N. Pine, U'te S. marshal for northern dist. of Illinois, or order, out of the appropriation named in the margin, seven thousand two hundred and nineteen dollars and twenty cents, on acc't of his expenditures.

And for which sum the said C. N. Pine is to be charged and held accountable. For so doing, this shall be your warrant.

Given under my hand and the seal of the treasury this second day of April, in the year one thousand eight hundred and fifty-nine, and of independence the 83d.

[SEAL.]

HOWELL COBB,
Secretary of the Treasury.

W. H. W.
$7,219 20.
J. A. L.
Recorded.
Chicago, Ill's.
D'f't on B. F. Strother.

Re. & E. 4.
Countersigned:

W. MEDILL,
Comptroller.
F. BIGGER,
Register.

Received for the above warrant draft No. 9737, on A. T., New York, $7,219 20.

J. C. H.

91 *No.* 435.—*Treasury warrant No.* 9981.

$1,658 $\frac{9}{100}$.
Interior.

TREASURY OF THE UNITED STATES,
Washington, June 28, 1859.

At sight, pay to C. N. Pine, U. S. marshal, or order, sixteen hundred and fifty-eight dollars $\frac{9}{100}$.

SAM. CASEY,
Treasurer of the United States.

ASS'T TREAS. U. S., *New York.*

Ass't treasurer. Paid at New York, July 5, 1859.

No. 435. Registered June 28, 1859, ($1,658 $\frac{9}{100}$.)

F. BIGGER,
Register of the Treasury.

Endorsed: C. M. Pine, U. S. marshal. C. N. Pine, U. S. marshal, pay G. J. Seney, cash'r, or order. Edw. J. Tinkham, cas. Received payment.

GEO. J. SENEY, *Cas.*

Treasury interior warrant.

TREASURY DEPARTMENT, *P. C.*

To the Treasurer of the United States, greeting:

Interior.
No. 9981.
Appropriation.
Exp's of courts of U. S.

Pay to C. N. Pine, U. S. marshal north'n dist. Ills., or order, out of the appropriation named in the margin, sixteen hundred and fifty-eight dollars and nine cents, on acc't of his expenditures.

And for which sum the said C. N. Pine is to be charged and held accountable. For so doing, this shall be your warrant.

Given under my hand and the seal of the treasury, this
[SEAL.] twenty-fifth day of June, in the year one thousand eight hundred and fifty-nine, and of independence the 83d.

HOWELL COBB,
Secretary of the Treasury.

W. H. W. R. & E. 25.
$1,658 09. Countersigned:
J. J.
Recorded, 27. W. MEDILL, *Comptroller.*
Chicago, Ill's. F. BIGGER, *Register.*

Received for the above warrant draft No. 435, on A. T., N. York, $1,658 09.

J. C. H.

92 *No.* 839.—*Treasury warrant No.* 388.

$7,400 00.
Interior. TREASURY OF THE UNITED STATES,
Washington, August 5, 1859.

At sight, pay to Charles N. Pine, U. S. marshal, or order, seven thousand four hundred dollars.

WM. B RANDOLPH,
Act'g Treasurer of the United States.

ASS'T TREAS'R U. S., *New York.*
Ass't treasurer. Paid at New York, Aug't 11, '59.
No. 839. Registered Aug't 5, 1859. ($7,400.)
F. BIGGER, *Register of the Treasury.*

Endorsed: Charles N. Pine, U. S. marshal. Pay G. J. Seney, cash'r, or order. Ewd. J. Tinkham, cas.
Received payment.

GEO. J. SENEY, *Cas.*

Treasury interior warrant.

TREASURY DEPARTMENT.

To the Treasurer of the United States, greeting:

Interior. Pay to Charles N. Pine, U. S. marshal, n. dist. of
No. 388. Illinois, at Chicago, Ill., or order, out of the appro-
Appropriation. priation named in the margin, seven thousand four
Exp's U.S.courts. hundred dollars, on account of his expenditures.

And for which sum the said Charles N. Pine is to be charged and held accountable. For so doing, this shall be your warrant.

Given under my hand and the seal of the treasury this fourth day
[SEAL.] of August, in the year one thousand eight hundred and fifty-nine, and of independence the eighty-fourth.

P. CLAYTON,
Acting Secretary of the Treasury.

W. H. W.
$7,400. R. & E., 4.
J. A. L. Countersigned:
Recorded, 4. W. MEDILL, *Comptroller.*
F. BIGGER, *Register.*

Received for the above warrant draft No. 839 on A. T., N. York, $7,400. J. C. H.

93 *No.* 1544.—*Treasury warrant No.* 1102.

$2,500 00
Interior.

TREASURY OF THE UNITED STATES,
Washington, Novem. 9, 1859.

At sight, pay to C. N. Pine, U. S. marshal, or order, twenty-five hundred dollars.

WM. B. RANDOLPH,
Acting Treasurer of the United States.

ASS'T TREAS'R U. S., *New York.*

Ass't Treasurer U. S. Paid at New York Nov. 11, '59.

No. 1544. Registered Nov'r 9, 1859. ($2,500.)
F. BIGGER, *Register of the Treasury.*

Endorsed: C. N. Pine, U. S. marshal. Pay R'd King, ass't cash'r, or order. U. O'Murub.

Rec'd pay't.

RICH'D KING, *Ass't Cas.*

Treasury interior warrant.

TREASURY DEPARTMENT, *P. C.*

To the Treasurer of the United States, greeting:

Interior. No. 1102. Appropriation. Exp's of courts of U. S.

Pay to C. N. Pine, U. S. marshal for north'n dist. of Ill's, or order, out of the appropriation named in the margin, two thousand five hundred dollars, on acc't of his expenditures.

And for which sum the said C. N. Pine is to be charged and held accountable. For so doing, this shall be your warrant.

Given under my hand and the seal of the treasury, this ninth day of November, in the year one thousand eight hundred and fifty-nine, and of independence the 84th.

[SEAL.]

HOWELL COBB,
Secretary of the Treasury.

W. H. W.
$2,500.
J. C. M.
Recorded.

R. & E., 9.
Countersigned:

W. MEDILL, *Comptroller.*
F. BIGGER, *Register.*

Present.

Received for the above warrant draft No. 1544, on A. T., N. York, $2,500.

J. C. H.

94 The counsel for the plaintiff here rested his cause.

And the said defendants, Hoyne, Snowhook, and Smith, to maintain and prove the said issue on their part, then called George J. Waterman as a witness, who was then a deputy clerk of said court, and who, being duly sworn, produced in evidence and identified the record of said court's order, made March 5th, 1859, concerning payment of jurors and amount paid grand jurors, which record is in the words and figures following :

District court of the United States, northern district of Illinois, December term, A. D. 1858.

SATURDAY, *March* 5, 1858.

It is ordered by the court that there be paid to the following named persons, summoned at the present term as grand jurors, the sum set opposite to their names, respectively, for their mileage and attendance during the present term up to and including Saturday, March 5, 1859.

95 To George W. Dole, the sum of fourteen dollars.
To W. P. Harris, the sum of fourteen dollars.
To William Lock, the sum of fourteen dollars.
To John H. Dart, the sum of fourteen dollars.
To Philander Eddy, the sum of fourteen dollars.
To D. J. Lake, the sum of fourteen dollars.
To Job Tabor, the sum of fourteen dollars.
To John Ryan, the sum of fourteen dollars.
To J. P. Philips, the sum of fourteen dollars.
To T. B. Penton, the sum of fourteen dollars.
To Henry K. Buel, the sum of fourteen dollars.
To Francis Honore, the sum of fourteen dollars.
To W. T. Schofieldt, the sum of fourteen dollars.
To Aken Lee, the sum of fourteen dollars.
To Robert McConnell, the sum of thirty dollars and ten cents.
To Thomas Webster, the sum of thirty dollars and ten cents.
To T. H. Ashton, the sum of nineteen dollars and ten cents.
To James Young, the sum of twenty-one dollars.

THOMAS DRUMMOND.

District court United States, northern district of Illinois, December term, A. D. 1858.

SATURDAY, *March* 5, 1859.

It is ordered by the court that there be paid to the follow-
96 ing named persons, summoned at the present term as petit jurors, the sum set opposite their names, respectively, for their mileage and attendance during the present term up to and including Saturday, March 5, 1859.

To R. W. Carsen, the sum of two dollars.
To Darwin Wilber, the sum of two dollars.
To William Bacon, the sum of two dollars.

To Matthew Taggart, the sum of two dollars.
To R. Burt, the sum of two dollars.
To Jason Duncan, the sum of two dollars.
To E. B. Hanna, the sum of two dollars.
To Daniel Mullins, the sum of two dollars.
To Rob. H. How, the sum of two dollars.
To George R. Webster, the sum of sixteen dollars.
To Edwin Matthews, the sum of two dollars.
To James Corbitt, the sum of two dollars.
To Jerome Petri, the sum of two dollars.
To John G. Gorin, the sum of two dollars.
To James S. Speed, the sum of two dollars.

THOMAS DRUMMOND.

97 Circuit court United States, northern district of Illinois, December term, A. D. 1858.

SATURDAY, *March* 5, 1859.

It is ordered by the court that there be paid to the following named persons, summoned at the present term as petit jurors, the sum set opposite their names, respectively, for their mileage and attendance during the present term up to and including Saturday, March 5th, 1859.

To S. M. Rossiter, the sum of six dollars.
To R. D. Perronett, the sum of two dollars.
To A. B. Mead, the sum of twenty-eight dollars.
To Thos. Barrett, the sum of two dollars.
To Alexander Neely, the sum of forty-one dollars and eighty cents.
To Joseph Lynch, the sum of two dollars.
To E. C. Dickenson, the sum of two dollars.
To G. S. Butlen, the sum of two dollars.
To Joseph Lynch, the sum of four dollars.
To Joseph Turner, the sum of sixty dollars.
To W. P. Abbott, the sum of six dollars.
To James Campbell, the sum of six dollars.
To J. R. Allen, the sum of six dollars.
98 To G. R. Ruckles, the sum of two dollars.
To Patrick Eagan, the sum of six dollars.
To B. R. Knapp, the sum of four dollars.
To R. W. Carson, the sum of eighty-one dollars and ten cents.
To Darwin Wilber, the sum of sixty-eight dollars and sixty cents.
To Samuel Crouse, the sum of four dollars.
To F. D. Spicer, the sum of four dollars.
To M. H. McGuary, the sum of four dollars.
To W. B. Farrell, the sum of for dollars.
To G. C. Ruckles, the sum of four dollars.
To Willam Bacon, the sum of eighty-one dollars.
To Matthew Taggart, the sum of eighty-eight dollars.
To R. Burt, the sum of eighty-one dollars.
To Jason Duncan, the sum of one hundred and eleven dollars.
To E. B. Hanna, the sum of one hundred and two dollars and twenty cents.

To James R. White, the sum of one hundred and thirty-one dollars.
To Daniel Mullins, the sum of eighty-four dollars.
To Robert H. How, the sum of ninety-four dollars.
To George R. Webster, the sum of one hundred and twenty-eight dollars.
To Edwin Matthews, the sum of one hundred and thirty dollars.
To James Corbett, the sum of one hundred and twenty-five dollars.
To Jerome Petrie, the sum of ninety-four dollars and ten cents.
To John G. Gorin, the sum of one hundred and twenty-nine dollars and fifty cents.
To S. M. Rossiter, the sum of fifty-four dollars.
To Thomas Barrett, the sum of two dollars.
To Thomas Barrett, the sum of sixty-eight dollars.
To Charles Douglass, the sum of sixty-six dollars.
99 To James S. Speed, the sum of ninety-four dollars.
To Benjamin R. Knapp, the sum of two dollars.
To B. F. Pine, the sum of two dollars.
To Robert Atkinson, the sum of eighty-eight dollars and ten cents.
To Wm. Johnson, the sum of four dollars.
To Geo. L. Butler, the sum of four dollars.
To Geo. C. Ruchel, the sum of four dollars.
To M. S. Nichol, the sum of four dollars.
To J. G. Finlon, the sum of four dollars.
To Henry Willard, the sum of four dollars.
To Jacob Newsome, the sum of four dollars.
To Michael Gleeson, the sum of four dollars.
To Charles C. Lee, the sum of four dollars.
To John McGovern, the sum of four dollars.
To James S. Simpson, the sum of four dollars.
To W. M. Foster, the sum of four dollars.
To Harvey Danks, the sum of eight dollars.
To J. H. Pionier, the sum of eight dollars.
To J. H. Pionier, the sum of six dollars.
To Elijah S. Watts, the sum of six dollars.

THOMAS DRUMMOND.

100 And the said defendants last named then introduced in evidence portions of executive document No. 53 (of 36th Congress 1st session) concerning the accounts of Charles N. Pine, late United States marshal of the northern district of Illinois, which document is referred to in said stipulation, and which portions so introduce in evidence *in evidence* are on page 32 of said document, in the words and figures following:

101 *Charles N. Pine, marshal for the northern district of Illinois, in account with United States.*

DR.

To balance due him, per report No. 9712.....	$10,279 77
	$10,279 77

CR.

By amount of his own compensation for attendance, travel, and for serving process in behalf of the United States, at and previous to the October term, circuit and district courts, 1858, as per abstract herewith			861 90
His disbursements for said courts, to wit:			
For witness, per diem and mileage	$915 70		
For jurors, per diem and mileage	1,724 90		
For expenses of prisoners	171 85		
For contingencies	989 56		
			3,802 01
By commission on 3,729 76, at 2 per cent..			76 04
By balance due from him to the United States.			5,539 82
			10,279 77

LEWIS JORDAN.

TREASURY DEPARTMENT,
First Auditors's Office, March 1, 1859.

102 And the counsel for the defendants last named then offered to read in evidence the deposition of David B. Martin, in the words and figures following:

103 Be it remembered, that on application of Thomas Hoyne, one of the defendants in a suit now pending in the circuit court of the United States for the seventh circuit and northern district of Illinois, wherein the United States of America are plaintiffs, and Charles N. Pine, Thomas Hoyne, and *als.* are defendants, I, Geo. S. Blakeley, U. S. Commissioner, in and for the northern district in the State of Illinois, have, this seventeenth day of June, A. D. 1861, at Peoria, in Peoria county, and State aforesaid, having given no notice to the said plaintiffs, proceeded to examine David B. Martin as witness on behalf of the defendants in the aforesaid suit, and I certify that the reason for taking said deposition is, and the fact is, the said witness resides at Peoria aforesaid, more than one hundred miles from Chicago, the place where the court in which said cause is expected to be tried is appointed by law to be held, and the reason why notice of the time and place of taking said deposition was not given to the said plaintiff or counsel is, and the fact is, the said plaintiff's
104 counsel resides in the State of Illinois, more than one hundred miles from Peoria, the place where said deposition was taken, and I do further certify, that the said David B. Martin, being brought before at the office of N. H. Purple, esq., in said Peoria, at the hour of ten o'clock, A. M., of the 17th day of June, 1861, being by me carefully examined, cautioned, and duly sworn, to testify the whole truth, says as follows, to wit :

Int. 1st. What is your age and occupation, and where do you reside?

Ans. My name is David B. Martin; my age is twenty-five years; my occupation is that of a collecting and travelling agent; I reside in the city of Peoria, county of Peoria, and State of Illinois.

2nd. Do you know Charles N. Pine, the defendant in the above entitled suit? If so, state how long you have been acquainted with him. Will you state whether you have been in his employ, in what capacity, how long it continued, and when it terminated.

105 Ans. I know said Pine; I have known him since the eighth day of September, A. D. 1858; I was in his employ while he was marshal of northern district of Illinois; it was as bookkeeper; I commenced as such bookkeeper on the eighth day of September, A. D. 1859, and ceased to act for him on the first day of February, A. D. 1859.

3rd. If, in answer to the foregoing interrogatories, you state that you were in Mr. Pine's employment while he was the late marshal of the United States for the northern district of Illinois, state what was the condition of his accounts, in regard to the United States moneys on hand to pay disbursments of the office, on or about the first day of February, 1859, and for some time previously thereto; the amount of money which was at that time to the credit of the United States, and what amount of such money was then actually on hand to pay the expenses of court; if any, and if not any, state the deficit as nearly as you can.

106 Ans. On or about the first day of February, A. D. 1859, said Charles N. Pine was, as marshal, a defaulter to the U. S. government to the amount of between five thousand and six thousand dollars, and that his defalcation commenced about the first day of October, A. D. 1858. At the close of the October term, 1858, of the court, there remained unexpended the sum of five thousand dollars, as appeared by the marshal's account current with the United States, but in fact there were no funds in his hands at the close of the term to pay the expenses of the term; the deficit was five thousand dollars, or thereabout.

Int. 4. Do you know anything of the late U. S. marshal having overdrawn or expended on private account any amount of the moneys received from the United States to pay expenses or disbursements of his office during the time you were in his employ? If so, state the amount which had been overdrawn or expended on private account about the first day of February, A. D. 1859, or previously

107 thereto, and what amount of government funds (if any) he had then actually on hand to pay accruing expenses of the U. S. courts about the first day of February, 1859; state all that you know about Mr. Pine's having diverted the use of the United States moneys to his private accounts, debts, or expenses, and the amount so diverted of such moneys, at or about the time last mentioned.

Ans. Yes; I cannot state the exact amount that was overdrawn, but Mr. Pine usually took and used on private account all the money that he could get, without any reference as to whose it was or what account it belonged to. On the first day of February, A. D.

1859, he had no government funds on hand, and there were large amounts due to individuals for services rendered the government unpaid, which ought to have been paid by him at the time the services were rendered. This statement contains all that I know of Mr. Pine having converted the U. S. States funds to his private use in paying debts and expenses, &c.

108 Int. 5th. Did you at any time put the U. S. government in possession of facts, specifications, or charges against Charles N. Pine, as U. S. marshal, and his use of the U. S. moneys? If so, state when that was, and annex a copy of such charges, facts, and specifications to his deposition; and also state to whom, and what officers of the United States, you communicated such charges; please state fully what notice the government had from you, that Mr. Pine was in default as a United States officer, or had unlawfully and improperly used the public moneys of the government.

Ans. In answer to the fifth interrogatory, I will state that the government was fully notified of the fact of Mr. Pine being a defaulter. I put the U. S. in possession of all the foregoing facts early in February, 1859, and I annex a copy of the charges, facts, and specifications as a part of my answer to this question, and marked "A." The facts were lodged with Jacob Thompson, Secretary of the Interior Department, and the President of the U. S. was made ac-

109 quainted with them. I also communicated the facts to Attorney General Black, and to all or nearly all of the officers of the cabinet by written statements and oral declarations.

6th. If you have not already done so now, please state fully all your knowledge of the use, by Pine, of the moneys received from the United States by him prior to the 1st day of February, 1859.

Ans. In answer to the 6th interrogatory, I state that the foregoing answer embodies all my knowledge of the use of government money by said Pine.

D. B. MARTIN.

And I do further certify that the preceding deposition was reduced to writing by me, and signed separately by the said David B. Martin, in my presence, and that I am not of counsel or attorney for either of the parties, nor am I interested in the event thereof.

110 Witness my hand and seal, this 17th day of June, A. D. 1861.

GEO. S. BLAKELEY, [SEAL]
U. S. Commissioner, Northern District of Illinois.

Comm'rs fees, deposition $3, p'd by def't, Hoyne.
Witness fees, $1 50, p'd by def't Hoyne.

GEO. S. BLAKELEY, *U. S. Com'r.*

Exhibit "A," referred to in the foregoing deposition.

111 *The conduct of Chas. N. Pine, U. S. marshal for the northern district of Illinois, exhibited officially and personally in a letter to his Excellency James Buchanan, President of the United States, by David B. Martin, late of the marshal's office, Chicago,* 1859.

INTRODUCTION.

CHICAGO, *March* 15, 1859.

In justice to those of my friends whose names have been dragged into this controversy between Mr. Pine and myself, I will state to the public, that before leaving Chicago, the day after I resigned my situation in the marshal's office, I did not reveal to any one the true object of my visit to Washington; preferring to go to Mr. Buchanan, and on my own responsibility make my representations to
112 him as a friend to his administration. Mr. Little, voluntarily and of his own accord, gave me letters of introduction to several of his friends in Washington, and the letter of endorsement which I publish. These, with a letter of introduction from Dr. Max Myers to Gen. Stevens, were all the letters which I used at Washington, in connection with the charges. It will be seen, therefore, that the constant association by Mr. Pine in his publications, of the names of Hon. S. A. Douglas, Hon. Jeff. Davis, Hon. Thomas Drummond, J. W. Davidson, and others, has been entirely unwarranted; and the names of these gentlemen have been used by Mr. Pine for the purpose of gratifying a malicious disposition, and diverting public attention from the issue which I have made with him. In order to show how far Senator Douglas is concerned in the matter, I will state that I never saw him till the nineteenth of February, long after Mr. Pine had made his publications, charging that I was in constant correspondence with him. So far as this charge is concerned, I never
113 wrote to or received a letter from Mr. Douglas in my life.

Senator Davis introduced me to Mr. Buchanan, gave me some advice, and here his action ended. Hon. Thos. Drummond was entirely ignorant of what I had done or intended doing, until he was made acquainted with the facts by the public prints, and thus it might be said of all the parties whose names Mr. Pine has so freely and unjustly used. In my first interview with Mr. Buchanan, I plainly told him that I did not seek for the office myself, nor for any friend, but had given him the facts as I here state them, because I felt it a duty I owed to him and his administration. At his suggestion I filed my charges and the proof, and thus left the matter. That the contest as it now stands, (and I put it in this shape for my own justification,) is an unequal one, all must admit. I have no paper in which to publish to the world the most fulsome and indelicate eulogies on my official and moral conduct, or in which to send broadcast to the world low and scurrilous letters written with my own hand
114 over fictitious names, to defame Mr. Pine, or his friends. I am not surrounded by a cohort of deputies and "poor relations"

dependent upon me for their bread, and ready to swear Mr. Pine to the penetentiary or to perdition, nor do I desire such aid. I appeal to God, the country, and the record, for the truth of what I have charged, and if these same deputies could be submitted to the test of a cross-examination, I would tremble for their guilt, while the public cheek would be mantled with one deep and crimson blush, for the shame and humiliation which would fall with crushing weight upon them. Mr. Pine has a public journal of his own, besides the sympathy and aid of the administration papers of the country, the republican papers of this city and State, and so far the countenance of the administration; while I am single and alone, without the aid of any paper of any party, in which to publish my replies, much less volunteer a reply for me.

Thus it will be seen that I am compelled to come in this form
115 before the public; but, with the facts which I here submit, I have no fear as to what the verdict will be in the public mind.

A statement of facts, addressed to his Excellency James Buchanan, President of the United States.

SIR: Without reciting the events that led to the removal of Hon. J. W. Davidson, and the appointment of C. N. Pine to the marshalship of the northern district of Illinois, I will state that in the capacity of bookkeeper I did the business of Mr. Davidson during the greater portion of the time that he held the office, and by a close application I made myself familiar with all the duties of the same. Not being a politician, I did not attend any of the political meetings then being held by all parties, nor did I in any way identify myself with either party or section of party, believing that my services were of more importance to my employer than I could make my devo-
116 tions to his party. When Mr. Pine took possession of the office, on the 8th day of September last, I, of course, felt anxious to retain my situation, and therefore sought an early interview with him. I gave him a full explanation of all the duties of the office, and of the position that I had filled. He was convinced of the necessity of having some one with him who was familiar with the business, and after satisfying himself of my political relations, he consented to retain me. Without one word from him I applied to my friends, who furnished him with ample security for the faithful performance of my duties.

I opened my books on the 14th day of September last, and commenced regularly the discharge of the business of the marshal's office, not confining myself to my books, but assisting the deputies, attending to the wants of the court, giving information to attorneys, as they would from time to time require it, and in all things making myself as useful to my employer as I possibly could. During the greater part of the time Mr. Pine was absent from the office,
117 and he not unfrequently took long trips from the city, taking with him large sums of money. About the last of October, or the first of November, he left the State of Illinois and went to the

city of Washington. While there he made frequent drafts upon me, as bookkeeper, for sums ranging from $75 to $225. The drafts came from the Bank of the Metropolis, and were collected by Messrs. Geo. Smith & Co., of Chicago.

He returned home on the first day of January last. On his arrival home I had closed the accounts for the October term, and they only awaited his oath, to the correctness of the same, before being sent to the First Auditor of the Treasury Department. There was at this time to the credit of the government about $5,000 on the account, but Mr. Pine's account being largely overdrawn the office was entirely out of funds. The December term of the courts had at this time been in session about twenty days, and as there had been no requisition on the government for funds to meet the expenses of the term, I was ordered to draw one up for as much as I supposed
118 would be allowed, and for as much as we needed under the circumstances. I drew the requisition for $7,000, and sent it forward, carefully omitting (by the order of Mr. Pine) to state to the Secretary of the Interior the amount that was then to the credit of the United States on the books of the office, and he purposely neglected to forward the accounts for the term just past, so that the Secretary could not possibly know how much he had. In order to meet his then pressing necessities, I prevailed upon the cashier of the Marine Bank to pass to the credit of Mr. Pine $1,000, which he did on my giving him a note embodying the words for the use of the the United States, and paying him $10 for the same. About this time Mr. Pine introduced to me his brother, B. F. Pine, of New Jersey, who, he said, would represent him (C. N. Pine) in the marshal's office.

Mr. B. F. Pine, after he had sufficiently impressed me, as he thought, with the importance of his knowledge of business, and his immense wealth, informed me that in future I would be ex-
119 pected to pay over to him all money received into the office on any and all accounts, and that he would disburse the same. This I did not object to, notwithstanding I saw the inexpediency of the arrangement on account of his then being ignorant of all accounts kept in the office, and of course he could not know upon what accounts money was due. He also informed me that he would do the financial business of his brother's paper, and requested of me my post office key, which I gave him.

I was summoned about this time to meet Mr. C. N. Pine, in his editorial room, (U. S. jury room, No. 28, Larmon's Block,) and to have with me a statement of the earnings of the office from the time that he had taken it up to the date of Dec. 21st, 1858, and a statement showing by whom (what deputies) it was earned. I met him there about 7 o'clock, with B. F. Pine, the newly-installed cashier, and J. W. Magill, a deputy, on the evening that he named. Mr. C. N. Pine opened the business of the evening by stating "that the object of the meeting was to arrange and agree upon some
120 fixed salaries for the deputies," and went on and said that "you had made it a condition of his appointment that he

should continue to publish his paper, the object of which was to divide the democracy of Illinois, so that in 1860 you could kill off Mr. Douglas, in the Charleston convention. That this was an unjust requirement he knew, still it was so, and that he must do it; and in order to do so, he must look beyond the $6,000 of emoluments, which by law he was entitled to from the marshal's office, as he could not cover up the deficiency on his account, live as he then lived, and do what you required of him, out of that amount, and that he had no doubt but that he would be justified in any course that he might see proper to pursue. He then said that his brother had a scheme which he thought would cover the case, and which met with his approval."

His brother then explained his scheme, as follows: "We (the deputies, clerks, and custodians of the marshal's office) would form ourselves into a joint stock company; he (B. F. Pine) would
121 subscribe so much, Mr. Magill would do likewise; I, also, was expected to subscribe, and so on through the whole list. The amount which each one subscribed would be added to the salary which his brother, the marshal, would agree to pay, the salaries to be arranged according to talent. These two am'ts, *i. e.*, the amount subscribed and the salary, would form a voucher on the emolument account, thus, instead of paying the surplus on that account into the treasury, according to law, it would be devoted to forming a capital stock for the maintenance of the marshal's paper." As soon as this scheme was disclosed, I determined that I would resign my situation, believing, as I did, that it would be carried out, and that I could not lend myself to it, without sacrificing my self-respect and honor. On an exhibit of Mr. B. F. Pine's figures, and on adjusting them to the account which we had before us, it was found that a large dividend of what might be subscribed could at once be transferred to its intended use, for, on adding the amount of the salaries which the marshal proposed to pay to the amount that he was entitled to
122 of the earnings of the office up to that time, and deducting this from the gross emoluments, (leaving out the fees on deeds and bonds,) we had a large surplus, "which, by law, should have gone into the treasury, but was to be considered capital stock paid in." The next day, February 1st, on being informed by Mr. Pine that my power of attorney at the Marine Bank was revoked, and that in future his brother, B. F. Pine, would sign checks in my stead, I, in accordance with my previous determination, addressed Mr. Pine a note of resignation, and prepared myself to pay you a visit with the view of informing you of these facts. On the occasion of my first visit to you I acted honestly and frankly told you that you had been deceived in Mr. Pine. My introduction to you by Senator Jefferson Davis, was of itself sufficient to convince you that what I told you was true; but at your suggestion, I went to Secretary Thompson, and, at his request, filed specific charges and specifications against Mr. Pine, believing when I did so that you would give them an
123 immediate investigation. That the charges may be properly brought before you, I hand you with this a copy of the same.

WASHINGTON CITY, D. C.,
February 8, 1859.

Hon. J. THOMPSON,
Secretary Interior.

SIR: In my interview with you, this day, with regard to the disqualification of Mr. Charles N. Pine for the office of marshal of the northern district of Illinois, which office he now holds, you expressed the wish that I would put the statements which I then made, in writing, and submit them to you; which, sir, I have done, in the form of charges and specifications, which, from my relations with Mr. Pine, I have had opportunity to know, and do know, that they are true. All of which is herewith submitted.

I am, sir, very truly, your obedient servant,

D. B. MARTIN.

124 *Charges and specifications against Charles N. Pine, marshal of the northern district of Illinois.*

Charge first. Charles N. Pine is incompetent to discharge the duties of said office.

Specification first. That on account of his wilful neglect of duty and a lack of business capacity, he has not become at all familiar with the rules of your department relative to a proper discharge of the duties of his office—the one in particular which requires promptness in the transmission of accounts, as can be verified by reference to the state of his accounts in your department.

Specification second. That he is not in the least familiar with the business of the office, and by his ignorance and neglect of the same, has, in some instances, embarassed the business of the courts, as can be verified by reference to his accounts, filed with the First Auditor, where the judge has supended bailiffs for neglect of attendance.

125 *Specification third.* That he constantly absents himself from the courts, and refuses to give his attention to the wants of the same, and has placed the management of the business of the office in the hands of his brother; who, from a lack of experience, is incompetent to attend to the same.

Charge second. That the said Charles N. Pine is destitute of moral honesty.

Specification first. That he appropriates money sent him by your department, for the use of the courts, to his own personal use.

Specification second. That he is recklessly extravagant. Although he is by law allowed to retain but $6,000 per annum of the fees and emoluments of his office, he has spent, during the time he has held the office—but a little over four months—the sum of $7,047 95, which appears by a transcript of his account hereto annexed. And I have reason to believe that he has used other very large sums which

126 do not appear on his account.

Specification third. That, notwithstanding you have made very liberal advances of money to him, to defray the expenses of the

courts, he has been compelled to resort to bank loans in order to meet the same, as can be verified by reference to the Marine Fire and Insurance Company of Chicago, Illinois.

Specification fourth. That in violation of a law of Congress (Statutes at Large, vol. 9, p. 60) he deposits money sent him by your department for the use of the courts, in the Chicago Marine Fire and Insurance Company's Bank, and not in the sub-treasury of the United States, as required by law to do, as can be verified by reference to the Marine Fire and Insurance Company, and to the sub-treasury of Chicago.

Specification fifth. That he refuses to pay the expenses of
127 the courts in gold and silver coin, as required by law to do, (Statutes at Large, vol. 9, p. 60;) but pays the same with Illinois, Wisconsin, and other currency, and appropriates the difference in the value of the same to his own use, as can be verified by reference to Messrs. Culver, Page, and Hoyne, Coe and Carpenter, or any witness or juror who has attended the courts since Mr. Pine's appointment.

Specification sixth. That he has made propositions to those in his employment as deputies, clerks, and custodians, to sign receipts for much larger amounts than he had contracted to pay them for their services; thus to cut down the gross emoluments of his office, and avoid paying into the treasury of the United States the surplus arising on the same.

Charge third. That Charles N. Pine is an unsafe, unsound, and unreliable democrat.

Specification first. "He published a paper in New Jersey,
128 before going to Illinois, which was in politics a know-nothing paper; and after going to Illinois, published one in that State, in the county of Lake, which was in politics a republican paper."

Specification second. He has advocated the principles of the democratic party but a very short time.

Specification third. During the recent exciting controversy on the Lecompton question, and not three weeks before his appointment to the office of marshal, he said "that Douglas was right, and that Buchanan was wrong, but that he had taken the course which he did as a matter of personal interest and policy."

Specification fourth. That he has taken his brother from New Jersey to Illinois, since his appointment as marshal, and has placed him in the most responsible office in his gift; thus depriving those who, by their votes, time, and money, labored to sustain the pres-
129 ent administration, from any of the benefits, honors, or emoluments of the office.

Specification fifth. That the said brother, to whom he has given so much patronage, has, time and again, before leaving New Jersey and in the city of Philadelphia, made it his boast that he never gave a democratic vote in his life.

All of which I stand ready to substantiate, if called upon so to do, by proof. (See papers in this case, on file in the office of the Attorney General, for affidavits and other proofs.)

Transcript referred to in charge second, specification second.

Sept.	14.	To cash	....	$69 13
	23.	do.	....	75 00
	24.	do.	....	2 10
	25.	do.	....	250 00
	27.	do.	....	7 00
	30.	do.	....	1 50
Oct.	2.	do.	....	110 00
	2.	do.	....	1 00
	4.	do.	....	16 00
	4.	do.	....	40 00
Dec.	3.	do.	....	230 00
	4.	do.	....	155 00
	4.	do.	....	46 00
	4.	do.	....	20 20
	7.	do.	....	91 66
	7.	do.	....	31 00
	9.	do.	....	11 40
130	15.	do.	....	482 85
	15.	do.	....	16 50
	16.	do.	....	75 61
	6.	do.	....	44 50
	7.	do.	....	96 00
	8.	do.	....	50 00
	12.	do.	....	152 03
	13.	do.	....	45 04
	15.	do.	....	385 00
	16.	do.	....	3 00
	18.	do.	....	84 80
	22.	do.	....	47 00
	30.	do.	....	324 55
	30.	do.	....	21 32
Nov.	1.	do.	....	54 62
	3.	do.	....	1,712 00
	4.	do.	....	79 57
	5.	do.	....	2 00
	6.	do.	....	32 25
	10.	do.	....	100 00
	11.	do.	....	1 00
Nov.	12.	To cash	....	$15 72
	12.	do.	....	16 50
	13.	do.	....	55 00
	15.	do.	....	35 00
	17.	do.	....	10 00
	18.	do.	....	321 66
	19.	do.	....	15 95
	22.	do.	....	25 00
	23.	do.	....	5 00
	27.	do.	....	62 50
Dec.	1.	do.	....	17 00
	18.	do.	....	128 85
	21.	do.	....	10 00
	22.	do.	....	102 00
	22.	do.	....	9 50
	23.	do.	....	58 55
	25.	do.	....	15 00
	27.	do.	....	104 00
	27.	do.	....	10 50
	29.	do.	....	85 60
	29.	do.	....	5 56
	30.	do.	....	7 00
	31.	do.	....	5 00
Jan.	3.	do.	....	192 16
	4.	do.	....	46 25
	5.	do.	....	20 00
	7.	do.	....	105 00
	10.	do.	....	64 93
	11.	do.	....	48 00
	12.	do.	....	114 00
	15.	do.	....	71 60
	17.	do.	....	10 90
	19.	do.	....	102 00
	20.	do.	....	53 76
	21.	do.	....	1 00
131	24.	do.	....	25 00
	24.	do.	....	5 90
	25.	do.	....	100 00
				$7,047 95

UNITED STATES OF AMERICA,
Northern district of Illinois.

D. B. Martin, being duly sworn, deposes and says that he has been bookkeeper in the United States marshal's office for the northern

district of Illinois for the term of one year and two months; that is to say, from the first day of December, A. D. 1857, to the thirty-first day of January, A. D. 1859; that he kept the books of C. N. Pine, the present marshal; and that the foregoing exhibit of the private account of the said C. N. Pine is correct in every particular.

D. B. MARTIN.

[SEAL.] Sworn to and subscribed before me this 2d day of February, A. D. 1859.

WM. H. BRADLEY,
Clerk of District Court United States, Northern District of Illinois.

132 DISTRICT OF COLUMBIA,
County of Washington, ss:

On this 10th day of February, A. D. 1859, appeared beforeme, a notary public in and for the county aforesaid, David B. Martin, to me personally well known, and whose statements are entitled to the fullest belief, and did depose and say that the foregoing charges and specifications are true, to the best of his knowledge and belief.

DAVID B. MARTIN.

Sworn to and subscribed before me this 10th day of February, 1859.

JOHN F. CALLEN,
Notary Public.

In order that you may better understand the *modus operandi* of the business, and see more clearly the facts which I here present, I have subjoined the forms, as adopted by the Department of the Interior and the Treasury Department, for keeping the accounts and transacting the business at the marshal's office pertaining to the government. On taking his oath and filing his official bond, the
133 marshal draws a requisition on the government for funds to pay the expenses of the courts. The requisition is addressed to the Secretary of the Interior, as follows:

Hon. ——— ———,
Sec'y of the Interior.

DEAR SIR: The term of the United States circuit and district courts, to be holden at in this district, will commence on the day of at that place, and it is estimated that it will continue days. There will be needed, to defray the expenses of the term, the following sums:

For per diem of 20 grand jurors, a. $2 00 per day..... $
Their travel.....
For per diem of 24 petit jurors, a. $2 00 per day.....
My own per diem attending court days, a. $5 00 per day.....
My travel.....
For per diem of crier and five bailiffs days, a. $2 00 per day.....

For travel and attendance of witnesses in U. S. C. cases $
For support of United States prisoners.....
134 And thus giving every possible and conceivable expense that can be anticipated by the marshal.
Total amount required..... $

The requisition closes by a request that the Secretary may cause a draft to issue in the marshal's favor, with which the marshal is to be charged on the books of the Treasury Department. On the receipt of this draft the marshal passes to the credit of the United States the amount of the same. The drafts, so drawn in favor of the marshal, are usually drawn on the collector of customs at this port for gold. The law requires that the money so received shall be deposited in the sub-treasury of the United States. The use of the funds being clearly stated in the requisition, the marshal proceeds to disburse the same, in accordance with the declared wants of the courts in his requisition.

The first account, according to the requisition, is to show what amount of the funds is paid to grand jurors, and is called abstract No. 1. This being the first on the requisition, is the first
135 also on the account current. It is word and ruled as follows:

No. 1.

Abstract of compensation to grand jurors for their attendance at the ——— court of the United States for the northern district of Illinois, begun and held at ——— on the ——— day of ——— in the year ———.

Names of grand jurors.	Residence.	Days.	Am't.	Miles.	Am't.	Total am't.	Original signatures.	Remarks.

The payments on this abstract are made on the affidavit of the juror, sworn to before the clerk of the court; the affidavit setting forth that the juror was summoned by the marshal, that he attended so many days, that he resides so many miles from the court, and that he is entitled to the compensation allowed by law. On a return of this affidavit with the abstract the court makes an order that the marshal shall be allowed by the United States the amount shown to have been paid to the juror, by the juror's affidavit, his receipt on the abstract, and the marshal's oath, which is attached to the
136 abstract. The payment must be made, according to law, in specie. The total amount of this abstract is carried on the books of the marshal to the debit side of the account of the United States. The next account, in accordance with the requisition, is abstract

No. 2.

Abstract of compensation to petit jurors for their attendance at the ——— court of the United States for the northern district of Illinois, begun and held at ———, on the ——— day of ———, in the year ———.

Names of petit jurors.	Residence.	Days.	A'mt.	Miles.	Am't.	Total am't.	Original signature.	Remarks.

This abstract is treated in the same way precisely as No. 1. And the next, in accordance with the requisition, is abstract

No. 3.

Abstract of compensation to witnesses for their attendance, on the part of the United States, at the ——— court of the United States for the northern district of Illinois, begun and held at ——— on the ——— day of ——— in the year ———.

137

Names of witnesses.	Residence.	Days.	Am't.	Miles.	Am't.	Total am't.	Original signature.	Remarks.

This account is treated just as the other two. The next account is abstract

No. 4.

Abstract of compensation of the marshal of the United States for the northern district of Illinois for attendance at court, serving process, and other services, at and previous to the ——— term of the court for the year ——— .

	Dollars.	Cents.
Voucher No. 1.....		
Voucher No. 2.....		

It will be seen that the marshal charges for his attendance on this abstract, as well as for other services. It being shown, by Mr. Magill's affidavit, that the marshal was absent during the months of November and December, the court then being in session, I will state

that he charged, and his voucher is on file, for the whole of that time; and, as he is anxious to prove himself a good Christian and an honest man, I will give the oath attached to this affidavit as proof of his assertion. It is as follows:

"NORTHERN DISTRICT OF ILLINOIS, *ss:*

138 "Charles N. Pine, marshal of the United States for the northern district of Illinois, being duly sworn, deposes and says, that all the services stated in the foregoing abstract, and in the vouchers therein referred to, have been rendered in good faith, as therein stated; that the expenses charged therein were necessary, and have been paid; and that all the items charged are correct and legal, and the amount thereof justly due to him, as therein stated, as he verily believes."

(Subscribed.)

This account is treated the same as the foregoing. The next account is abstract No. 5. This abstract is for the expenses of the United States prisoners; the vouchers or bills being rendered by the jailors of the county where the prisoner is confined. It is worded, ruled, and treated as all the foregoing accounts are. The next and last account is abstract

No. 6.

Abstract of contingent expenses of the ——— court of the United States for the northern district of Illinois, at and previous to the ——— term thereof, held at ——— in the year ———.

139

		Dollars.	Cents.

On this abstract is charged for the crier and five bailiffs, mentioned in the requisition, as well as for all other expenses of the courts. A bailiff, it will be remembered, is by the law considered distinct from the office of deputy. A bailiff can draw two dollars per day from the government, but it is a matter of doubt whether a deputy, under full pay from the marshal, as will be see by reference to the emolument account, can act as bailiff and draw the amount. But as Mr. Pine makes his deputies officiate in this capacity, I will leave the propriety of the arrangement for you to decide, and only give it, as my opinion, that but few of his deputies ever receive the amount that they receipt for as bailiffs.

All the accounts thus treated of are closed into the account of the United States, as kept on the books of the marshal, and at the close of the term for which the requisition was drawn the following account current, with the abstracts and vouchers referred to, is
140 forwarded to the Frst Auditor of the Treasury Department, that the money thus disbursed may he credited to the marshal on the books of that department:

The United States in account current with ——— ———, *U. S. marshal for the northern district of Illinois, for expenses of the United States* ——— *court, held at* ——— *term,* 18 .

DR.

To compensation of grand jurors		Abstract No.	1.
" " petit jurors		" "	2.
" " witnesses		" "	3.
" " marshal		" "	4.
" jailor's fees and expenses of supporting prisoners, etc		" "	5.
" contingent expenses of court		" "	6.
" supplemental		" "	7.
" marshal's commissions on the above, less am'nt of abstract No. 4, at 2 per cent			

CR.

By draft No. ——, dated———, 18 , on ——— $

It will be seen that the foregoing accounts relates only to
141 the funds of the government and the expenses of the courts, and is in no way connected with the funds of the marshal's office, and any use of these funds, other than the use proposed to be made of them by the requisition, is a direct violation of the sub-treasury laws, and is punishable. That Mr. Pine has misused and misapplied these funds, I think I have clearly shown, in the charges and specifications which I have filed against him.

The fees and emoluments of the office of the marshal is another sett of accounts, entirely different from the sett just treated of. From the annexed copy of the emolument account, which, like the account current, is the final closing of all the accounts in the sett, you can form a more correct idea of the sett than I could give by any other illustration:

*Return of fees and emoluments of ——— ———, United States marshal for the ——— district of ———, from ——— to ——— and of moneys paid out by him during same period for the services of his deputies, and for his office expenses; also of the receipt of fees and emoluments previously returned by him as "not
142 received."

First. District court:

Fees and emoluments earned from the United States, received ..... $

Fees and emoluments earned from the United States, not received .....

Fees and emoluments earned from individuals, received

do do do not received.

Second. Sircuit court:

(Same as above.)

(*A copy of the forms in use having been denied me by the departments, I have been compelled to rely to a great extent upon memory for those I give. They will, however, be found correct.)

Third. Fees and emoluments earned in the pursuit of or arrest of persons charged with crime, and on examinations before United States commissioners, received .... $
Do. do do not received ....
Fees and emoluments earned in the performance of any service enumerated in the act of February 26, 1853, or any duty imposed by any other existing provision of law not herein otherwise stated, received .....
143 Do. do not received .....
Fifth. For commission on disbursements .....
Sixth. For salary during said period .....
Total gross emoluments earned by marshal and deputies ..

Recapitulation of fees and emoluments.

First. By the marshal:
Earned from the United States, received .....
Do. do not received .....
Earned from individuals, received .....
Do. do not received .....
Second. By deputy:
(Same as above, thus recapitulating the earnings of each deputy by name.)
Total gross emoluments earned by marshal and deputies brought down .....
Allowances to be deducted from the gross earnings and retained by the marshal .....
For the amount paid deputy ——— in full:
For his services, as per voucher No. 1 .....
Do. do No. 2 .....
Clerk hire " 3 .....
Total of allowances .....
144 Total net emoluments .....
Maximum compensation allowed by law at the rate of $6,000 per annum .....
Balance (if any) due the United States, a certificate of deposit for which is herewith sent .....

Marshal's oath.

I, ——— ———, marshal of the United States for the ——— district of ———, do solemnly swear that the foregoing account is in all respects just and true, according to my best knowledge and belief; and that I have neither received, directly or indirectly, nor directly or indirectly agreed to receive, or be paid, for my own or another's benefit, any other money, article, or consideration than therein stated; nor am I entitled to any emoluments for the period therein mentioned other than those therein specified. So help me God.

——— ———.

Signed and sworn to before me this —— day of ———, 185 .

——— ———.

The fact that this account, which should have been filled out and forwarded by Mr. Pine within thirty days after the expiration of Dec. 31st, 1858, is not yet (March 15th, 1859) on file in the In-
145 terior Department, is proof of specification first, under charge first. The accounts on file in the First Auditor's office will prove the second specification, and the extracts from affidavits, published elsewhere, will prove the third. The magnitude of Mr. Pine's private account as given will prove specification first, second, and third, under charge second. His own confession will prove specification fourth, and Mr. Page's affidavit, as given in Mr. Pine's defence and published by me elsewhere, will prove the fourth; and by his own showing charge third, with all the specifications, are proved true, except, perhaps, specification third, which is put beyond doubt by the affidavits of Mr. Eli P. Judd, Mr. H. R. Lamer, and Mr. J. V. Thompson, published elsewhere, and which could be increased to almost any number.

Since these charges were filed Mr. Pine's conduct, in many respects, would of itself be sufficient to damn him and his associates forever, in the estimation of all honest men; besides his publications in his paper, the Chicago Herald, have been such as to disgust
146 every reader of them, they being of that class which are denominated low, vulgar, and obscene, but are a true index of his soul. Without further remarks, sir, I will now proceed to notice his defence.

Reply of the U. S. marshal for the northern district of Illinois to the charges preferred against him by David B. Martin.

U. S. MARSHAL'S OFFICE,
Northern District of Illinois, Chicago, March 10, 1859.

To his Excellency James Buchanan, President of the United States:

SIR: In the latter part of January last I had occasion to dispense with the services of a clerk, or bookkeeper, named David B. Martin, having found him to be basely dishonest. Chagrined and embittered by this event, the said Martin repaired to Washington, and, according to statements set afloat in newspapers opposed to your administration and the following *printed* document, he preferred vari-
147 ous charges against me as U. S. marshal for this district:

In reply to the first clause of the above, *i. e.*, the dispensing part, I refer to my letter of resignation and "the letter of John T. Little." The two together, I think, will prove Mr. Pine to be a wilful falsifier of the truth. "Having as yet received no official notification of any charges against me, although I wrote requesting a copy of them some weeks ago, I will act on the presumption that the following is a correct copy of those said to be on file, and will reply to them as though officially requested to do so."

To relieve the department of the responsibility thus thrown upon it, I will state that Mr. Pine did have a copy of the charges sent to him. The first charge, it will be seen, is for incompetency, and the first specification is as follows:

Specification first: That on account of his wilful neglect of duty,

and a lack of business capacity, he has not become at all fa-
148 miliar with the rules of your department relative to a proper discharge of the duties of his office; the one in particular which requires promptness in the transmission of accounts, as can be verified by reference to the state of his accounts in your department.

Mr. Pine's reply is: "Stop thief."

"By comparing the handwriting in the 'accounts on file' with the handwriting of Martin in the charges preferred against me, (if they are in his hand writing,) it will be seen that Martin wrote every word and figure in those accounts himself."

The law says, that within thirty days after the expiration of the 31st day of December, and the 31st day of June, of each year, it shall be the duty of the marshal to make a return of all the fees and emoluments of his office for the period just past, together with an account of all money paid out by him for the services of his deputies and his office expenses. By reference to the day-book kept in Mr. Pine's office, there will be found, at the expiration of Dec. 31st, 1858, a complete statement of all the fees and emoluments earned by
149 the marshal and his deputies, from the time that Mr. Pine took possession up to that date, with a recapitulation, showing how much was earned from the United States in the district court and received. Also, how much earned and not received, and the amount earned from individuals in the same court received and not received. The earnings in the circuit court are treated in the same way, and the amount earned by each deputy, by name, plainly given. The only reason why this account was not forwarded to the Department of the Interior, or was not completed, is the notorious fact that Mr. Pine could not or had not made up his mind as to what amount of salary he would pay his deputies. There being no agreement made with them, it follows, as a matter of course, that the account could not be completed, nor is not to this day. With this explanation, I trust he will see the point to the specification, *i. e.*, there being no account on file in Mr. Thompson's department, Feb. 8, 1859, he (Mr. Pine) was clearly guilty of a violation of the law, and therefore incompetent.

Mr. Pine, on specification second of the same charge, says:
150 "In 'specification second,' made to substantiate the charge of 'incompetency,' my accuser refers to the suspension of *bailiffs* by the judge to prove that I am not familiar with the business of my office. In reply, I submit the certificate of his honor, Judge Drummond, (the judge referred to by Martin,) remarking that Judge Drummond is not of my politics, and is said to be a friend of Martin's."

The judge being a friend of mine, I feel that I can rely upon his honor's *sustaining me in the following explanation:* I was not aware, prior to the suspension of the bailiffs in Mr. Pine's account, that Judge Drummond had determined (before Mr. Pine came into office) to allow for only three bailiffs instead of five, and having heard him frequently complain of neglect of attendance, I considered it a fair inference that the suspension was made for want of proper attendance in the court.

On specification third he says:

"In 'specification third' my accuser says that I constantly
151 absent myself from the courts, refuse to give my attention to the wants of the same, and have placed the management of the same in the hands of my brother, all of which is false, as your excellency will perceive by the accompanying affidavit. In reply to the point, I refer to the certificate of Wm. H. Bradley, esq., clerk of the U. S. district and circuit courts, remarking that Mr. Bradley is a republican in politics, and said to be on *very* friendly terms with Martin."

I publish Mr. Bradley's statement in another place, and submit to your excellency if Mr. B., in any way, shade, or form, certifies to Mr. Pine's attendance. He knows, sir, as every attorney of the court knows, and as Mr. Pine himself acknowledges, that he (Pine) is constantly absent from the courts. Notoriously was he so through the months of November, December, and January, but he swears, on abstract 4 of his account with the Treasury Department, that he was in attendance, and therefore charges the government $5 per day for his time.

Relying upon the affidavits of his deputies and others, (which
152 affidavits, by a law or rule of practice particularly applicable to this case, is ruled out, because they are not relative or pertinent to the case,) to disprove specifications first, second, and third, charge second, *i. e.*, that he is destitute of moral honesty, Mr. Pine comes to—

"Specification fourth, appended to charge second. So far as it relates to depositing in the Marine Bank, I plead guilty, but do not understand this fact to prove me destitute of moral honesty.

"When I came into office I advised with Martin, who had been bookkeeper and cashier for my predecessor, as to the propriety of depositing all funds in the Marine Bank. He said that Mr. Davidson, the late marshal, had deposited in that bank, except, perhaps, a trifling amount which he deposited in the custom-house for the purpose of *appearing to comply with the law*, as he understood it, and he (Martin) produced a rule of the U. S. court for this district, requiring the clerk thereof to deposit admiralty funds in said bank, and argued in favor of depositing the funds of the marshal's office therein, as being not only entirely safe, but expedient and proper, on the
153 score of convenience. Accordingly, I allowed him to deposit in the Marine Bank."

Mr. Pine is very anxious to say that I advised him to deposit the funds of the marshal's office in the Marine Bank, and equally careful to omit to state that I advised him to deposit the funds of the government, where by law they belong, in the sub-treasury, though he does give me the credit, as you will see, of calling his attention to the law, as in the case of Mr. Davidson's deposits. The rule of court to which he refers does not refer to the money of the government, for the reason that Congress has made provision for the deposits of all funds of the government, over which the court has no control. The rule is as follows :

"Ordered, (on the 30th of May, 1852, the order still being in force,) that hereafter all moneys paid into the court in admiralty or other cases pending at Chicago, shall be deposited in the Marine Bank of Chicago."

To specification fifth, under this charge, he says :

154 To specification fifth, under charge second, I reply with the affidavit of Mr. Daniel W. Page, of the firm of Culver, Page & Hoyne, referred to by Martin.

The gentleman who received the pay for Coe & Carpenter, also referred to, was not in town when I requested their testimony."

I am perfectly willing to accept Mr. Page's affidavit, and publish it elsewhere, as proof positive of the specification, and have no doubt in my mind but that if the gentleman who collects the bills of Messrs. Coe & Carpenter had been in town, I would have got another affidavit equally conclusive as the one given by Mr. Page.

I must here call your attention to the fact that there is nothing in all Mr. Pine has said of himself, and had others say for him, but that goes to vindicate me in the charges which I have preferred against him—that his moral character is as dark and damning as Satan himself wishes it. I could prove far more fully by calling up witnesses from the haunts of vice he frequents, were it not more than

155 useless, with the array of facts that we have before us, to introduce such testimony on this occasion; but as he considers that his moral character is entirely disposed of, and as the public will, I have no doubt, appreciate his confession, I will allow him, in his own words, to damn himself politically, without further reference to his morality.

"Now we come to my *political* character, my *moral* character having been disposed of. In "charge third" Martin charges that I am an unsafe, unsound, and unreliable democrat, and asserts several falsehoods to make his position good. It strikes me as somewhat ridiculous in me to treat this charge with sufficient seriousness to reply to it ; but as I have undertaken to go through with the entire list of charges, I will reply to this.

I was a whig when there was a whig party, without knowing exactly why I was a whig. The principal reason, as nearly as I can recollect, why I was a whig was, because my father and Henry Clay were whigs." A most humiliating confession—a whig be-

156 cause his papa and Henry Clay were whigs. A sensible answer, but just such as you would expect from a *man such as he is.* Now, let us ask him why were you an anti-Lecompton democrat? He must answer, because papa and Douglas were anti-Lecompton democrats, and Douglas gave me the Princeton post office. Why are you a Lecompton democrat ? Because papa and Mr. Buchanan are Lecompton democrats, and because Mr. Buchanan gave me the marshalship. I will let him talk a little more about his whigism. He says :

"I was a whig while there was a whig party; and although for a considerable portion of my whig days or years I didn't know enough of the history of the two great parties of the country to be able to

give any good reason why I should be a whig, yet I have no apologies to make for having been a whig and a very humble supporter of Henry Clay."

Well said; an editor of a whig paper (since Mr. Mulliner swears that the Jersey Blue was not a know-nothing paper, and Mr.
157 Pine does not tell us what kind of a paper it was, we must conclude it to be a whig paper) during a great portion of his whig days, and yet he says, I didn't know enough about the history of the two great parties of the country to be able to give any good reason why I was a whig.

I wish this confession was made under charge first. I think, sir, it would convict Mr. Pine of incompetency to discharge the duties of his office as clearly as you could ask; but I will let him proceed in his own defence. He says:

"But though a whig without knowing exactly why I was one, as I have already confessed, I will not confess to the ignorance necessary to constitute a "know nothing." Even before I became a democrat, I knew enough not to be a know nothing, or edit a know nothing paper. On the contrary, the paper which I published in New Jersey (The Jersey Blue) was bitterly opposed to the know nothings and their proscriptive policy."

Now, sir, I submit that, with these confessions before us,
158 am I not safe in charging that Mr. Pine is a know nothing, and that, too, without the aid or intervention of the order? He says:

"The accompanying affidavit of Robert Mulliner, who worked next door to the office in which said paper was printed, will serve to refute this charge; I may be able soon to furnish other evidence from democrats in Camden, New Jersey."

I do not think any other needed. "While publishing the paper in question, I made arrangements to remove to Illinois, where I arrived in September, 1855. About this time, John Miller, esq., then postmaster at Philadelphia, Hon. Joel H. Sutherland, and Hon. Wm. H. White, of Philadelphia, all of which are personally known to your excellency as democrats, and all of whom had been readers of the paper which I published in New Jersey, wrote to the Hon. S. Douglas, introducing me as a democrat, and urging me upon him as a fit person to edit a democratic paper. These letters were sent *by mail*
159 to Mr. Douglas, (not "presented" to him by me as he says in his letter, which accompanies this,) but Mr. Miller and Mr. White sent me copies of theirs. Having mislaid Mr. W.'s, I can only produce that of Mr. Miller, but I doubt not Messrs. White and Sutherland stand ready to testify to my democracy."

Not if they have seen your confessions as quoted, you can rely upon that; Mr. W. and S. understand themselves too well to testify to your democracy *now*, I would say, and still he says:

"In the same specification to which I have thus, at length, referred, Martin charges, under oath, 'that after coming to Illinois,' I published a newspaper in this State, "in the county of Lake, which was in politics a *republican* paper."

When I first came to Illinois I stopped at Waukegan, the county seat of Lake county, Illinois, where I remained some two or three weeks, until my goods come from the east, when, before unpacking the goods, I removed to Chicago, where I remained until
160 February following. I published no paper in Lake county; but while there, wrote a few articles in defence of Mr. Douglas, the Kansas-Nebraska bill, and democracy generally, which articles I induced the editor of an anti-Nebraska paper, then published there, to publish, which he did under a sort of editorial protest." If Mr. Pine would use the word republican instead of anti-Nebraska, for the paper is a republican paper, I think his confession would cover the case exactly; for the articles which he alludes to were more palpable than the protest he speaks of. In reply to specification sixth, he says:

"Specification sixth, made to substantiate 'charge third,' asserts a falsehood, which it is difficult to refute, as its complete refutation would make it necessary to swear and examine every man with whom I have held any conversation on politics during the last year."

In reply, I would call his attention to the affidavits of parties with whom he has had conversation; the men are already sworn. I
161 do not charge anything with regard to the Princeton post office; but since Mr. Pine wishes to introduce it, I have no objections, and will give him the full benefit of all he may make out of it; but I desire to call his attention to the affidavits, which show that he had another motive in view, when he resigned his office, viz: to escape the facts being made public that he was a defaulter. He says: "It is true, I was postmaster at Princeton, and it is equally true, that with a newspaper to attend to, that office was the cause of considerable more trouble and toil than profit to me. The enemies of the administration accused me of being influenced in my political opinions by the fear of losing the post office, if I did not defend the administration. As the best means of meeting this high-minded style of argument, I resigned said post office, as your excellency may recollect."

Not wishing, at this particular time, to refer to Mr. B. F. Pine in any way more than to vindicate myself and the charges, I will allow the marshal to say whether the specification referring to Mr.
162 B. F. Pine, the marshal's brother, be true or not. He says:

"Specification fifth, which is the last in the series of Martin's charges, may be true or not. I do not hold myself accountable for my brother's political acts or declarations. But since his political position has been dragged into Martin's charges, I will state that my brother has never been identified with the democratic party. In 1856 he voted and acted with the Fillmore Americans."

Yet he is a good enough democrat to represent the marahal in the businsss of the marshal's office, under the present administration. So Mr. Pine seems to think.

Thus, sir, ends Mr. Pine's vindication of himself. A master-piece he has made of it, you must confess. In view of his own confessions,

I need not ask if it is necessary for me to go further in search of evidence to convict him of all that I have charged; and if he is not removed, it is only because the charges are not sufficient to remove him.

163 I have now passed through the statement of this case, and come to the proofs, as introduced by Mr. Pine, to prove my dishonesty and his honesty. And I now confidently think that I can take his own statement and his own proof together, and convict him, as I have charged, as clearly as the track of a sunbeam to the bosom of a flower.

First. At the very opening of his letter to the President, as published with his proof, he states what he and every man in his office knows to be untrue, devoid of any foundation in fact. He says: "In the latter part of January last I had occasion to dispense with the services of a clerk or bookkeeper, &c.," thus plainly charging that he discharged me. His own conscience will convict him of deliberate falsehood in this statement. I resigned my position voluntarily, as Mr. Pine well knows, for reasons stated in my statement to the President.

I take, first in order, the affidavit of John W. Magill. He says:

"That said Martin had full control of the books, accounts, vouchers, and papers in said marshal's office, and had charge of the

164 same; that he received and disbursed all monies; had in his charge and control the bank and check books; had full power to check on the bank in Pine's name; that he retained such power and performed such duties up to within a few days of his leaving said employ; that said Martin, having been in the marshal's office for some time previous to Pine's appointment, professed to be intimately acquainted with the business of the office, and its details, and his advice and suggestions were observed and followed."

Thus he shows, and I acknowledge, that I had the entire control of the books, accounts, vouchers, monies, papers, and business of the marshal's office, and, by his own showing could control and direct the entire business of the marshal. But he says:

"That during the absence of said Pine from Chicago, and while he was at Washington, D. C., in November and December last past, said Martin, at different times, addressed deponent as follows:

"'Jack, why don't you get Charlie to let me manage things

165 for him? If he will let me have my own way, I can make ten thousand clear for him a year. I figured it for Uncle Jim, and I don't see why I can't for Charlie.' That after Pine's return to Chicago, said Martin, in my presence, suggested to Pine that he should allow him (Martin) to, as he said, 'fix things; that he knew how to do it.'"

Here is, to my mind, a most palpable contradiction. First, he swears I had the entire control of the office, when, with a short-sightedness unparalled and unpardonable, represents me as pleading for additional power. By his own showing in the first extracts quoted. I ask, what additional powers could be conferred? But, as though controlled by some strong and unaccountable influence, he strives to place me in

the position of asking an extension of my already unlimited powers. This, to the mind of every right thinking man, must leave Mr. Magill in a very unenviable position, and if his affidavit was not to
166 go beyond the bounds of his acquaintance, I should not deem it worthy of any notice.

I have confessed that I had the most complete control of the business of the marshal's office, as Magill has sworn, and on the same point I refer to the affidavit of John T. Little, which is as follows:

STATE OF ILLINOIS,
Cook County, ss:

I, John T. Little, of the city of Chicago, in the county of Cook and State of Illinois, being duly sworn, depose and say, that on or about the first day of October, A. D. 1858, I did receive the appointment of deputy, under Charles N. Pine, U. S. marshal for the northern district of Illinois; that I am acquainted with David B. Martin, late bookkeeper and cashier of said Pine's office; that I became acquainted with said Martin some time during the month of September, A. D. 1858; that the said Martin had full control of the books, accounts, vouchers, and papers in said marshal's office, and had the charge of the same; that he received and disbursed all the moneys, or
167 nearly so; that he had in his control the bank and check books, had full power to check on the bank; that he retained such power and performed such duties up to the time, or within a day or so, of the said Martin's leaving the office of the marshal aforesaid. Thus it will be seen that Mr. Magill and Mr. Little both understood that my powers were full and complete; and I only have to add, that if any person can, for one moment, believe that I made any dishonorable proposition to him, or even insinuate such a thing as he has sworn, I should regard such a person more with feelings of pity than any other.

The following gentlemen have made affidavits for the marshal. I will in another place comment more fully upon some of them, which will apply to all. J. S. Speed, the former marshal of Kentucky, as, he says, a man noted principally for the quantity of poor liquor he consumes; Rob't H. How, "a youth, unknown to fortune and to fame;" Dr. V. A. Boyer, a deputy; H. M. Rossiter, supposed
168 by the some to be the veritable wandering Jew; S. T. Hosmer, present bookkeeper for the marshal, for whose financial qualifications I refer to the New York Lumber Company; Jacob Newsom, of of New York; A. P. Sharp, a deputy United States marshal and a travelling salt pedler; John S. Mulliner, a tailor, whose shop was next to the office of the Jersey Blue, and at present dep. U. S. marshal; B. F. Pine, the affectionate brother of the marshal and others. It will be recollected that I have charged upon Mr. Pine that he has overdrawn his account. What one of these affiants controverts the fact that the amount of Mr. Pine's account, is in amount, as I have stated it to be? Not one! Very well; this fact, then, is fixed that the books show the amount to be, as I have stated. As the language of all the affidavits is very similar on this point, I will take that of Jas. S. Speed, which is as follows:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

James S. Speed, being duly sworn, deposes and says, that he resides in the city of Chicago; that he was formerly marshal for the district of Kentucky, and is familiar with the business of a marshal, and with the manner in which the books and accounts of a marshal's office should be kept; that the deponent has examined the books in the office of the marshal for the northern district of Illinois, as kept by one David B. Martin, and that he finds said books and accounts to have been fraudulently kept as to the alleged private account of the marshal, and as to the entries which constitute the account between the marshal and the said Martin as cashier; that large sums of money which should have been charged to other accounts have been charged and posted (by Martin, as deponent believes) to the private account of the marshal; that checks drawn in favor of the said D. B. Martin are charged and posted to the private account of the marshal; that entries are made in the cash account, by which Martin might have been enabled to embezzle large sums of money, and that the deponent has not been able to discover wherein such entries have afterwards been corrected, or such deficiencies accounted for.

Deponent further deposes and says, that the accounts kept by Martin indicate a deliberate intention, on the part of said Martin, to defraud the marshal, and to cause difficulty between him and the Treasury Department; and that he, the deponent, from what he has seen of Martin's fraudulent bookkeeping, could not credit any statement the said Martin may have made, or may make, with reference to the private account of the marshal, or with reference to anything said to have been charged and sworn to by said Martin against Mr. Pine, marshal for this district.

You will see this affidavit admits the amount of the account to be as stated by me; at least it does not deny it. The same is equally true of each of the others. This fact being fixed, I will proceed, briefly, to examine the contents of this affidavit. First. He states that he was U. S. marshal in K'y, and is familiar with the business of a marshal and the manner in which the books of a marshal should be kept. What are we to understand from this very profound and logical statement? Are we to understand that the books in a marshal's office in K'y, some twenty years ago, were kept in the same style that they are now? Are we to understand that all marshals keep their private accounts in the same manner, and that they all draw like amounts for which they should be personally liable? In fine, by what criterion does he assume to judge that my entries upon the books of the office are false and fraudulent? What item, what amount, and what date did I wrongfully charge to the private account of the marshal, any given sum? He swears that "checks drawn in my favor are charged and posted to the private account of the marshal." This is true. The marshal filled checks in his own handwriting, drawn in my favor, at various times, and sent me to the bank to draw the money; which money the marshal

took and applied to his own private use, as, for instance, Sept.
172 25th, 1858, he drew a check in my favor for two hundred and fifty dollars, on which I drew the money and gave it to Mr. Pine, and he took the money and left immediately for Princeton. When he started to Washington the same thing occurred. Now, I submit whether it was right or wrong to charge these checks to the private account of the marshal.

Again he says, "that entries are made in the cash account, by which Martin might have been enabled to embezzle large sums of money." What entries does the affiant here refer to? Where do they stand? On the day-book, cash-book, journal, or ledger? What is their date, and what is the sum? Why, if these errors are so numerous and so obvious, has this affiant and every other one (except B. F. Pine, to whom I will attend) most studiously avoided naming one item, one book, one date, or one amount so fraudulently charged by me? The truth is obvious. Mr. Pine knows the account is true in amount, true in entry, and so does each of these men making these affidavits, for what I say of one applies to all.

173 And I now, once for all, challenge Mr. Pine to submit those books to any competent bookkeeper, and in my presence, and I pledge myself to sustain my charges from the books. No one of these deputies or pretended bookkeepers dare specify, but they all swear in the most general and unsatisfactory manner; all arriving, however, at one conclusion, and that is, that they would not credit any statement which I would make, and here is the main point of these affidavits. They are not got up that the ends of justice shall be subserved, but to break and ward off the force of the statement which I have made. For this purpose, Mr. Little, one of these affiants, was despatched to Washington to do some *fancy swearing*, and have me arrested. How much these men shall profit by this loose mode of swearing, I submit to the great jury of the country.

I will now examine Mr. B. F. Pine's affidavit. He says:

"That after spending a few days in and about the said mar-
174 shal's office, he became acquainted with David B. Martin, who was then bookkeeper and cashier in said office; that the said Martin, soon after deponent's acquaintance with him, and on several occasions, made dishonorable propositions and suggestions as to the mode of conducting and doing the business in the marshal's office, for the purpose of having the deponent repeat the same to the marshal. That Martin repeatedly urged him to have the marshal allow him to arrange the accounts and vouchers, saying that if the marshal would do so he could easily make for him ten or fifteen thousand dollars a year, and that if the marshal would increase his salary by $300, he (Martin) would swear the accounts through, and swear that black was white and white was black. That the frequency of such suggestions and earnest desire of Martin to have the business of the marshal's office conducted dishonestly, induced deponent to think that Martin was a person unworthy of trust; that deponent communicated the suggestions and propositions of said Martin to the marshal

and to his chief deputy, John W. Magill; that from them he learned that Martin had made similar suggestions to them."

I beg special attention to the above extracts, taken from the affidavit of B. F. Pine. None can fail to note his anxiety to convict me by the words that he employs, and none can fail to see the pitiable situation in which this B. F. Pine stands to-day. A brother to the marshal, leaving his family, coming, under the pretence of wealth and influence, to the aid of his brother, the marshal. Ignoring every principle of personal delicacy, he swears that I made frequent and repeated dishonorable suggestions to him in regard to the business of the office, "for the purpose of having deponent repeat the same to the marshal." Again, in the same solemn affidavit, he says: "that deponent communicated the suggestions and propositions of said Martin to the marshal, and to his chief deputy, John W. Magill; that from them he learned Martin had made similar suggestions to them." Take these two portions of his affidavit together, and I would agree to hold my breath during the entire time that any honest man would require to convict him of a deliberate design to do me injustice. Can any man believe that I made the propositions, as charged, first, by this clear-sighted affiant, with a view to have him communicate the same to the marshal, when, as he comes to learn, as he states, that I had already made similar propositions to him and his principal deputies? As to swearing white is black and black is white, I confess that if ever I had entertained any such idea, I should be constrained to abandon it after the publication of these affidavits. I ask the marshal to designate the accounts or papers I, as bookkeeper, must swear to. There is not one, and he well knows it. With one other notice of this affiant I will dismiss him, and turn him over to the lashings of his own guilty conscience. He says:

"That deponent has spent some time in investigating the books and accounts kept by said Martin in the marshal's office, and finds them to have been wrongly, falsely, and fraudulently kept. That said Martin has also, knowingly, wilfully, and fraudulently, charged to the private account of said C. N. Pine large sums, when it is evident and apparent that the same properly belonged to and were chargeable to other accounts, being disbursed to defray court and office expenses; that by said book it appears that such intention, dated as early as the fourth day after said Martin's employment by C. N. Pine, the first item of $69 13 to the marshal's private account, and which heads the transcript of that account furnished by Martin in the printed copy of his charges, is, to a great extent, made up of charges of disbursements properly belonging and chargable to the government, and among which are $10 paid to witnesses and $15 paid to custodians."

He is called, as a witness, to impeach my books. He charges, in the fullness of his wisdom and knowledge of bookkeeping, that I have charged large sums to the marshal's private account which ought to be charged to the government. Among which, he says, is $10 paid to witnesses and $15 paid to custodians.

Now, if this "affectionate" affiant had the perception to

discover that money had been paid to custodians and witnesses, and wrongfully charged to the private account of the marshal, how could it be possible that he failed to learn and state the name of the witness and custodian? "Oh! shame, where is thy blush?"

You will see, from the forms which I give as used by marshals, that money paid by custodians of vessels is not properly chargable to the government. Still this is the man who is called to discredit my account. The same unpardonable ignorance which he displays applies to every other affiant on this point.

Again he says: "That he has done and is doing such labor, *not for pay, but for the affection which he bears his brother*, the marshal, *i. e.*, correcting the books and making affidavits." The proceeds of the *large* lamp shop, conducted by this affiant, on Chesnut street, Philadelphia, doubtless will enable him to serve his "poor relations" gratuitously. But it is passing strange how one engaged in
179 the lamp trade can swear in such impenetrable darkness.

I would like to take these affidavits separately and expose them, but I deem it useless after what I have said. One or two others, however, demand a passing notice. I would like to enquire of the marshal whether Jacob Newsom, who swears "that he is inspector of customs, and that he has examined the books and discovered numerous false entries," &c, is the same Newsom who kept the old "Plough Tavern" in New York city, some years since, and who figured so largely in a certain journal calle l the Police Gazette. If so, I respectfully refer to the private police of this city and of New York for his responsibility and character. The next affiant that I shall notice is Gen. Iram Nye, who says, in his sworn statement, addressed to Mr. Pine, speaking of the compensation to be allowed deputies:

"Martin remarked that you could hire them for six or seven hundred dollars per year and take their receipts for three-
180 fourths of all the fees they earned, thereby saving to yourself three or four thousand dollars per year; saying, at the same time, that your predecessor had done so, and that his honor, Judge Drummond, had told him such a transaction was legitimate."

Whatever may be my own faults and improprieties involved in this controversy between myself and Mr. Pine, I cannot consent that Judge Drummond's name shall be lugged into the matter as it is by both Mr. Pine and Mr. Nye, for he stands above reproach, and would not for a moment countenance any violation of the law in letter or in spirit, and it is utterly untrue that I have ever used his name in the manner stated by Mr. Nye.

I have thus briefly noticed the affidavit, and now desire to call attention to the charges preferred by me against Mr. Pine, and see how the matter stands.

I charge him with ignorance and incompetency. This charge is most triumphantly proven by his published letter to the President, independent of my own proof.

181 I have charged that he deposited the public money in banks instead of the sub-treasury. To this charge he pleads guilty.

I have charged that he has largely overdrawn his accounts, and have submitted the proof; and I now charge him with fixed purpose to deceive and mislead the department.

In his letter to you he says, that at the time when the loan of one thousand dollars was effected at the Marine Bank, that he had on deposit in said bank three thousand two hundred dollars; and at the maturity of said note, which was thirty days from its date, he had $5,200. This he shows by the statement of B. F. Carver, cashier of said bank, as follows:

"MARINE BANK OF CHICAGO,
"*Chicago, Ill., Feb. 28th*, 1858.

"C. N. PINE, Esq., *U. S. Marshal.*

"DEAR SIR: In answer to your letter, relative to the loan made by Mr. Martin from this bank on or about the 27th of December, 1858, is as follows:

"Mr. Martin made an application for a loan of $1,000 for
181 thirty days, on the 27th of December, 1858, and presented the note signed by C. N. Pine, U. S. marshal, per Martin, and we discounted the same. He said he would not probably want the money, but would prefer to have it to the credit of U. S. marshal. At that time your balance, at this bank, was over three thousand dollars; and at the maturity of the note you had a balance of over five thousand dollars.

"The loan mentioned above is the only one you have ever had at this office.

"B. F. CARVER, *Cashier.*"

Mr. Carver is a gentleman of strict integrity and honor, and his statement is entitled to the fullest credit, and by his statement I will convict Mr. Pine of a deliberate intention to deceive and mislead the department.

On the 20th day of December, 1858, the day on which the October term of the court ended, and the accounts for that term were closed, there was a balance in favor of the government of about $5,000; up to the 27th of December, 1858, the day when the
283 loan was negotiated, there had been no expenses of the government paid, and of course the credit to the government had not been lessened. A comparison of Mr. Pine's bank-book with the accounts contained in his execution ledger, (the book which contains an account of money received on executions issued by this court,) will show that $2,500 of the 3,000 then to his credit at the bank was money received from the sale of vessels on orders of the court issued in admiralty cases, and the order for the distribution of the same had already been made by the court, and hence the money must be transferred to the registry of the court, where, by law, it should have gone as soon as it was received by the marshal, instead of being placed to his credit in bank. All the balance, including the $1,000 borrowed, was due to individuals on executions, and had been called for. Thus, it will be seen that a short time after the note was given,

there was but a small amount to the credit of Pine. At the time that the note matured, Mr. Carver's statement shows that
184 there was a credit on Pine's account of $5,000. No money being drawn from the government during this time, how was Mr. Pine's account increased to $5,000? I answer, by money collected on executions, liable to be called for at any moment. And will boldly state that if some of the attorneys would consider and care for the interest of their clients, as they do consider and care for this political huckster, he would long since have proved to the world that all I have charged is true. I will instance, for example, the case of Burt *et al.* vs. Death *et al.*, controlled by Messrs. Hoyne, Miller & Lewis, where some $1,500 was collected sometime in January, and was not paid over when I returned from Washington, in March, as I was informed by Mr. Lewis; it being held by the marshal on the plea that he is entitled, by the wording of the writ, to hold the money, so collected, ninety days.

While I exonerate Mr. Carver from any blame, he not knowing from whence the money came that was deposited in the Marine
185 Bank by Mr. Pine, I still charge a fixed purpose on the part of Mr. Pine to mislead the department, by stating, as he does in his letter to your excellency, that at the time of said loan there was a balance to his credit, in the Marine Bank, of 3,000, and that it was 5,000 at the maturity of the note; thus attempting to show that the money on deposit was government money, when he well knew that he did not have one dollar of the government money on deposit. I submit to your excellency if this statement of the facts does not convict Mr. Pine of gross and palpable dishonesty, aside from all other proof furnished by me. I now, with the fullest confidence of their truth, reassert every charge that I have made against the marshal of the northern district of Illinois, especially that of depositing government funds in bank, and overdrawing his account, and challenge a full and thorough examination of his account on the books.

I am, sir, very truly, your ob't servant.

D. B. MARTIN.

186 *Miscellaneous papers, being a few affidavits, statements, certificates, and letters on file, with the charge against Mr. Pine, marshal of the northern district of Illinois.*

The following letter was published in the Washington States February 27th, 1859, it having been refused by the proprietors of the Washington Union, and afterwards filed with the charges:

WASHINGTON, *Feb. 17th*, 1859.

Messrs. Editors of the Washington Union:

GENTLEMEN: Enclosed I hand you an article which was published in the Chicago Daily Herald, of the 13th inst., and have to ask that you will give it a place in your columns, in connection with the two enclosed letters. I desire, also, to state that I came to Wash-
187 ington, as the friend of the administration, to give it timely

warning of the misconduct of the government officers. That it is not my desire nor my intention to make the charges which I have filed public, to any greater extent than will enable me to prove the truth of them, and protect the administration from the suspicion of encouraging and sustaining a dishonest person in office; but since Mr. Pine has thought proper to bring the matter before the public through the press, I am perfectly willing to follow him there.

I am, sir, very truly, your obedient servant.

D. B. MARTIN.

The article referred to is predicated upon the following truthful despatch reported to the New York Herald, under date of Feb. 12th:

"There is a well authenticated rumor that the United States marshal of northern Illinois has largely overdrawn his salary, and rendered himself, in other respects, liable to the penalties of the sub-treasury law."

188 The dispatch was reported by telegraph from New York to Chicago. I will state that I never had any acquaintance with the correspondent of the New York Herald more than a formal introduction, and will leave the public to judge of the propriety of the following extract from the article published by Mr. Pine:

"The above despatch came over the telegraphic wires yesterday. It appears to have emanated from the gentleman in Washington who makes up the special dispatches to the New York Herald, and who, doubtless, was induced to make the above interesting item by the misrepresenations of a fellow named Martin, a discharged bookkeeper from the United States marshal's office, who has gone to Washington to try to revenge himself upon his late employer."

When Mr. Pine penned this his own conscience must have convicted him of a deliberate falsehood. That I resigned my situation he and every one about his office well knew; and yet he boldly

189 asserts, and continues to so assert, even to this day, that I was discharged, thus publishing himself to the world as a self-convicted liar. I give my letter of resignation, one of the letters referred to in my letter to the Union:

UNITED STATES MARSHAL'S OFFICE,
Northern District of Illinois, February 1, 1859.

SIR: Believing that, under the present system of doing business in this office, I can be of no further use to you, and, by remaining, can only compromise myself in my own and in my friends estimation, I therefore herewith hand you my resignation, and have only to ask an early settlement of my account.

I am, sir, very truly, your obedient servant,

D. B. MARTIN.

TO CHARLES N. PINE,
Marshal Northern District of Illinois.

I also give the letter of Mr. Little, and will state that the occasion of the publication of this letter in the States was Mr. Little's own unheard of treachery and folly. When I left Chicago he was

my friend; offered to pawn his watch if I needed money; gave me the letter of his own accord, and besides a great deal of unasked-for advice. With Mr. Pine's paper, containing the above article, came Mr. Little, to perjure himself in Pine's defence. Up to this time I had made no use of Mr. Little's letter in any way, but now, finding that I could convict Mr. Pine of a lie, and place Mr. Little in his true light before the department, I published it. If any of his friends are disposed to doubt the facts, thus stated, I have other letters of Mr. Little in my possession, which will, I trust, convince the most fastidious.

CHICAGO, *Feb.* 2, 1859.

This is to certify, that I have known the bearer, David B. Martin, esq., for the last six months, during which time he has been engaged in the United States marshal's office for the northern district of Illinois, and I take great pleasure in bearing my unqualified testimony in behalf of Mr. Martin as a gentleman eminently fit for the position, an intelligent, worthy democrat, of strict integrity, and who resigned his situation because the marshal's treatment was not in accordance with his high sense of honor.

J. T. LITTLE.

Mr. Little is the secretary of the Illinois State Central Committee, a warm supporter of Mr. Buchanan's administration, and a deputy United States marshal under Mr. Pine.

Mr. Gorin, who was on the jury at the time I resigned my situation, and on very intimate terms with Mr. Pine, his brother, and Mr. Magil, it will be conceded, knows somthing about the true state of affairs. I therefore introduce his affidavit in relation to this point.

Affidavit of John G. Gorin, esq., of Washington, Tazwell Co., Ill.

STATE AND NORTHERN DISTRICT OF ILLINOIS :

John G. Gorin, of lawful age, being first duly sworn, says that he is well acquainted with C. N. Pine, U. S. marshal for the northern district of Illinois, and David B. Martin, late bookkeeper for said Pine. Deponent states that the article which appeared in the Chicago Herald of the 13th instant is utterly false, in so far as it charges that said David B. Martin was discharged by said Pine. Deponent states, as the fact, that said Martin voluntarily resigned his position as bookkeeper, and addressed a note of resignation to said Pine, which said note the said Pine showed to this deponent some days after its date and receipt thereof by said Pine; and at the time and in the conversation when said note was shown to this deponent, said Pine spoke in the highest terms of the said Martin, and seemed to regret deeply that said Martin had resigned said office; that he, the said Martin, had acted very foolish in resigning; and this deponent states that he has often heard the said Pine speak of the said Martin as a gentleman of strict integrity and honor; especially did he so speak soon after his return from Washington the present winter,

stating in the strongest terms that said Martin was in every way competent to the discharge of his duty as such bookkeeper. Deponent also states that he is a practical bookkeeper, and that he has often looked through the books of said office kept by said Martin, and deponent has no hesitancy in stating that, in his opinion, said books are well and correctly kept. As to that portion of said newspaper article which denies that said Pine has overdrawn his salary, this deponent can only say that soon after the resignation of said Martin, J. W. Magill, one of the deputies in the said marshal's office, came to this deponent and inquired what Martin was going to do; said that he had heard that he (the said Martin) was going to make a point on said Pine that he had overdrawn his salary; said that was true that Pine had overdrawn his salary, but they (Pine his brother,
and Magill) had blocked that game, for B. F. Pine was worth
194 fifty thousand dollars, and they had telegraphed to Philadelphia for money, and would in a few days have all they wanted; and in a day or two afterwards the said Magill again came to this affiant and stated that the thing was all right now; certain that C. N. Pine could overdraw ten thousand dollars in the Marine Bank; And deponent further states that he has heard B. F. Pine, who is chief clerk in the marshal's office, say that he had the most implicit confidence in the honesty, integrity, and capacity of said Martin, and the said Martin was the only one in the office upon whose judgement they could rely in regard to the business of the office.

J. G. GORIN,

Sworn and subscribed before me this the 15th day of February, A. D. 1859.

WM. H. BRADLEY, *Clerk.*

In reference to the charges filed against Mr. Pine, Mr. Gorin says:

John G. Gorin, a juror, now in attendance on the United
195 States courts at Chicago, upon his oath, says, that he has examined the above and foregoing charges separately and closely, and that he knows them to be true, so far as they relate to jurors and their pay; and this affiant further states that he demanded payment of his fees as such juror, and was paid in currency at the office of said Pine, out of money which had just been received from the sale of property on execution, as he understood from a deputy marshal who was in the office at the time.

J. G. GORIN.

Sworn to before me.

WM. H. BRADLEY, *Clerk.*

The following letter from Mr. Rogers was written long after I left Chicago for Washington City. It was given voluntarily, not solicited:

CHICAGO, ILL., *February 8th*, 1859.

Hon. JOHN C. BRECKENRIDGE,
Vice-President of U. S.

SIR: This letter will be presented to you by David B. Martin, esq., of this city, whom I take great pleasure in introducing to you.

196 Mr. Martin has been, for perhaps two years, in the office of the marshal of the northern district of Illinois, as its principal clerk and bookkeeper, and is, no doubt, better acquainted with the business of the office and its requirements than any other person in this city. *He is an honest, industrious, and faithful man and officer.* He is *eminently qualified* for any position which he may seek, and is a man in whose *capability and integrity all have perfect confidence* who know him and have had business in his office. He will make known to you the business of his trip to Washington. *You can rely implicitly upon all that he says to you.* Any assistance you may render him, and any courtesy shown him, will be gratefully received and appreciated by him, and by many here who are his warm and personal friends and your most ardent political supporters.

I am, sir, very respectfully, your friend,

JNO. G. ROGERS.

A letter from Vice-President Breckenridge, endorsing Mr. Rogers.

197 WASHINGTON CITY, D. C.,
February 25, 1859.

Mr. Rogers and myself were schoolmates. I have seen him but once for many years, but believe him to be a very worthy and intelligent gentleman.

JOHN C. BRECKENRIDGE.

A letter from Hon. W. L. Underwood, M. C. from Kentucky, endorsing Mr. Rogers.

WASHINGTON CITY, D. C.,
February 26, 1859.

Whilst I have no other acquaintance with Mr. Martin than that growing out of the within introduction, it affords me pleasure to say that a recommendation and endorsement from no quarter would entitle Mr. Martin to higher consideration than that of John G. Rogers, the writer of the within. I have known him from his boyhood, *and no man stands higher for integrity and honor* than he.

W. L. UNDERWOOD.

Affidavit of Eli P. Judd, esq., (charge third, specification third.)

198 STATE AND NORTHERN DISTRICT OF ILLINOIS, *ss:*

Eli P. Judd, being first duly sworn, says: that he is well acquainted with Charles N. Pine, acting United States marshal for the northern district of Illinois; that he has had conversation with said Pine in regard to the Lecompton constitution, and the difference between Mr. Douglas and Mr. Buchanan on that question; that at one time deponent says Mr. Pine said that Mr. Douglas was right upon that issue, and that old Buck was wrong and beside was a d——d old

shit-arse, and that he has heard said Pine use language to the same purport on various occasions, *i. e.*, that Douglas was right, and that Mr. Buchanan was wrong.

ELI P. JUDD.

[L. S.] Subscribed and sworn to before me, this 28th day of July, 1859.

E. M. FISHER, *Clerk.*

Affidavit of J. V. Thompson, esq., (same charge, same specification.)

STATE OF ILLINOIS,
Bureau County, ss:

199 Joseph V. Thompson, having been first duly sworn, on oath, says: that on the night of February 14th, 1858, he called at the house of Charles N. Pine, then editor of the Bureau County Democrat, published in Princeton in said county, for the purpose of consulting said Pine as editor and chairman of the county central committee, in reference to sustaining the Hon. S. A. Douglas in his course on the Lecompton question in Congress. Pine then repeatedly said that Douglas was right, and he would follow him on that question if he went to hell; that old Buck was a d * * * * * old f * * t, and if he (old Buck) persisted in his course the party would go to hell; that this affiant did, on the next day, procure a call, numerously signed by democrats, to the county central committee of the democratic party, requesting the said committee to call a mass meeting to consider the action of the *Senate caucus* in reference to the reading of Hon. S. A. Douglas and others out of the party for
200 their opposition to the Lecompton constitution; that Pine told this affiant he was willing to sign and publish the call, and did so, but begged this affiant to prevent him (Pine) being called upon publicly to take grounds against old Buck, for if he did and commented on the same in his paper, accordingly as he firmly believed was right, a copy of his paper might get to Washington, and the post office would be taken from him; that thisa ffiant, as he had told him the night previous that he had been informed by a person recently from Washington, who had conversed with one Dr. Leib, that he (Pine) was spotted for his endorsement of Douglas, and would soon be ousted; on which said Pine declared that Douglas was right, but that he could not afford to loose the post office at that time, and was afraid, if we held the meeting, he would be compelled to commit himself strongly, and his head would go off, but that we need not hold back on that account, for, by the Eternal God, Douglas was right; that in a few days before said meeting was held, said Pine in-
201 formed this affiant that he believed that a trap was laid for him by three of the signers of the call for the meeting, to get the post office from him; that he saw the bait, but should not go in. He (Pine) then repeated that he had not changed his views on the Lecompton swindle; that Douglas was right, but his (Pine's) enemies should not get the post office; that in the next issue of Pine's paper

(before the meeting called for) the politics were changed; that Stephens & McConihe, of Princeton, the securities on Pine's official bond, to whom Pine was largely indebted, were both ardent admirers and supporters of Douglas up to the time the call was published to sustain Douglas, and that they and Pine changed in one day, as is notorious in Princeton and elsewhere.

JOSEPH V. THOMPSON.

Subscribed and sworn to before me, this first day of March, A. D. 1859.

EDWARD M. FISHER, *Clerk.*
Per W. A. FISHER, *Deputy Clerk.*

I will here introduce the affidavit of J. V. Thompson, giving
202 the true reason why Mr. Pine resigned the post office at Princeton. This affidavit is corroborated and confirmed by others on file, copies of which I failed to keep. A statement, also, from some twelve or fifteen of the best men in Bureau county is on file, to the effect that they have no confidence in Mr. Pine's political or moral honesty.

STATE OF ILLINOIS,
Bureau County, ss:

Joseph V. Thompson of said county, being first duly sworn, says that he is well acquainted with Charles N. Pine, U. S. marshal of the northern district of Illinois; that on the first Tuesday in November, 1857, the day of general election in said State, said Pine being then postmaster of Princeton, and editor of the Bureau County Democrat, was absent from town, no one knew whither; that deponent was informed by Justus Stephens, of said town, one of the securities on the official bond of said Pine, that he, Pine, was a defaulter and had used the public money for his private purposes; that a draft for $300 and upwards, drawn by the Post Office Department on said Pine as postmaster, was then in the hands of the agent in Princeton
203 of the Chicago & Burlington Railroad Company, for carrying the United States mail; that Pine had left town on the Sunday previous to borrow money to pay the same; that he, Stephens, and his partner and brother-in-law were his securities, and was fearful he would have to pay the same, or Pine would lose the post office, and the newspaper would go down, and solicited the aid and advice of this deponent in the premises, suggesting that this deponent and his brother-in-law, Frederick Mosely, being democrats and friends, should share the loss with the said Stephens and McConihe; that Pine already owed them, Stephens and McConihe, a large sum of money, and was borrowing daily; that this deponent did advise said Stephens not to pay the draft, but let Pine go and the paper with him, that when a man turned rascal his usefulness was gone as to the party; that in a few days said Pine returned to Princeton without money; that said Stephens and this deponent were summoned to Chicago;

that Stephens left in the morning train; that J. Massilton,
204 McConihe's brother-in-law and partner in trade with said Stephens, and now postmaster in Princeton, and the other security on Pine's official bond, came to this deponent and informed him that said Pine had not paid said draft, but had notified said Stephens and McConihe that morning that the time for the payment of said draft would expire at 12 m.; that he, Pine, could not raise the money for the same, and they must do it; that said Stephens had sent him, McConihe, to the deponent for counsel, and help to pay the same; that this deponent went to said Moseley with McConihe, who related all the particulars to said Moseley, urging him to help pay the said defalcation, but said Moseley utterly refused to help, alledging as a reason, that if Pine had used the post office money in the way charged, he was dishonest, and no longer worthy of support; that his usefulness had gone as an editor for the democratic party; that McConihe and this deponent then returned to Princeton to the house of McConihe, and there met said Pine by appointment;
205 that said Pine did then and there, in the presence and hearing of this deponent and McConihe, admit that he had used the post office money belonging to the United States for his private benefit, and could not repay the same; that if said draft was not paid that night the post office and newspaper would go to hell together; that this deponent refused to pay anything for that purpose, having already presented said Pine, as editor, with $137 towards establishing his paper, and endorsing the reasons given by Moseley. Said McConihe then gave said Pine drafts on Flint & Wheeler, Chicago, for the amount of said post office drafts, and took Pine's note for the same; protesting to this affiant that he and Stephens would not have done so, but Pine owed them a large sum of money, and if the said post office drafts went to protest it would become public, Pine would loose the post office, and they, Stephens and McConihe, would be sued on Pine's official bond, and have to pay anyhow; that the deponent went to Chicago that evening, and the next day informed
206 said Stephens of the result of said draft; that said Stephens then, and several times during that week, denounced Pine as a dishonorable and dishonest scoundrel; said so soon as he and McConihe could get clear of said Pine and get their money back, he, Pine, might go to the devil; that they would get their names off the official bond as quick as possible; that he believed Pine to be a reckless, unprincipled adventurer, all of which this deponent then endorsed, and does at this time; that said Stephens and this deponent then knew that said Pine had been doing a good business in his newspaper office; that the democrats of Princeton had subscribed and paid nearly $2,000 in money to establish said newspaper; that Pine's subscription list was not less than 1,300; that he had also the post office; that he had not paid any, or but a very small portion, of the subscription he had subscribed; that said Stephens had given him, Pine, the amount by him subscribed, over $200; that from that date, November, 1857, up to February, 1859, said Stephens repeatedly informed this deponent that

Pine had not paid them, Stephens and McConihe, the amount
207 they had lent him, but that Pine was largely indebted to them.

JOSEPH V. THOMPSON.

Subscribed and sworn to before me, this 1st day of March, A. D. 1859.

EDWARD M. FISHER, *Clerk.*
By W. A. FISHER, *Deputy Clerk.*

Statement of W. H. Bradley, esq., at the request of C. N. Pine, esq., marshal of the northern district of Illinois.

I, the undersigned, clerk of the district court of the United States for the northern district, do hereby certify that, so far as I have information or knowledge of record or otherwise, B. F. Pine, esq., is not at this date, and has not been, deputy marshal in said district during the term of office of C. N. Pine, esq.

I further certify that, in my opinion, the attendance upon the courts for the said district, while in session, by the marshal's deputies since he, said C. N. Pine, esq., has been acting as marshal, has been as constant and uniform as similar service and attention have been rendered under any previous marshal for the last three or four years.

208 WM. H. BRADLEY,
Clerk Dist. Court U. S., Nor. Dist. Illinois.

CHICAGO, *March 5th*, 1858.

Statement of D. W. Page, esq., in proof of specification fifth, under charge second.

UNITED STATES OF AMERICA,
Northern District of Illinois:

Daniel W. Page, of the firm of Culver, Page and Hoyne, (referred to in specification 5th, of charge 2nd, preferred by D.B. Martin against C. N. Pine,) deposes and says that all the accounts said firm have ever presented against the United States have been paid in checks or currency; that said firm has never demanded specie in payment of the same, and that all bills presented since the appointment of the present marshal have been paid by his late bookkeeper, David B. Martin, and that Mr. Pine has never been present, to my knowledge, when such bills were paid.

D. W. PAGE.

209 *Affidavit of H. R. Lemar, (same charge, same specification.)*

STATE AND NORTHERN DISTRICT OF ILLINOIS, *ss:*

H. R. Lemar, being first duly sworn, says that he is well acquainted with Charles N. Pine, acting United States marshal for the northern district of Illinois; that he was partner with said Pine in the newspaper published in Princeton, Bureau county, Illinois, called the Bureau County Democrat; that he has heard said Pine say, in regard to the difference between Mr. Douglas and Mr. Buchanan, on the Lecompton issue, that Mr. Douglas was right and that Mr. Buchanan

was wrong; and that he, Pine, felt like following Douglas if it to hell; here some other words passed, and then Mr. Pine adde his bread and butter was concerned. This conversation took place in the office of the Democrat about the time that Mr. Pine changed the tone of his paper on the Lecompton question.

H. R. LEMAR.

[L. S.] Subscribed and sworn to before me, this first day of March, 1859.

E. M. FISHER, *Clerk.*
By W. A. FISHER *Deputy Clerk.*

210 I will state that I did not see any of the parties referred to in the charges against Mr. Pine, with regard to the same, at any time before the charges were filed, nor have I seen any of them up to the time that this goes to press. I have purposely avoided seeing them, preferring to rely upon their well-known reputation for truth, as to the statements that they make.

Endorsed: Opened for Mr. Hoyne June 24, 1861.
WM. H. BRADLEY, *Cl'k.*

211 And in so offering said deposition in evidence, the counsel for the defendants last named then and there proposed to the court to prove by the same, that on or about the first day of February, A. D. 1859, the late marshal, said Charles N. Pine, had actually converted to his own use, and paid out on his own private account, all the moneys which he had before that time received from the government, beyond what had actually been disbursed by him for the government in the course of his duties as marshal, prior to that time; that he had not then paid the expenses or made the disbursement for the previous December terms of the U. S. circuit and district courts for the northern district of Illinois, referred to in the treasury transcript given in evidence in this cause, and that he received no further sum or sums of money from the government, from the first day of February, A. D. 1859, until after the execution of the bond given in evidence in this cause.

But the plaintiff's counsel then and there objected to the reading of said deposition, which objection the court then and there
212 sustained, and refused to allow said deposition, or any part thereof, to be read in evidence; to which decision of the court in refusing to allow said deposition to be read in evidence, the counsel for the defendants last named did then and there except. The counsel for the said defendants, Hoyne, Snowhook, and Smith, then proposed to prove that in respect to the vouchers which were transmitted to the government by the late marshal, said Charles N. Pine, on the 16th of March, 1859, for the expenses which had accrued for the previous December term of the court, said vouchers were in fact given by the said Charles N. Pine, without the actual payment of the moneys represented in such vouchers, but that such moneys were in fact paid out of the moneys received by him from the government,

Pine had not paid them, Stephens and McConihe, the amount
207 they had lent him, but that Pine was largely indebted to them.

JOSEPH V. THOMPSON.

Subscribed and sworn to before me, this 1st day of March, A. D. 1859.

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But the plaintiff's counsel then and there objected to the reading of said deposition, which objection the court then and there
212 sustained, and refused to allow said deposition, or any part thereof, to be read in evidence; to which decision of the court in refusing to allow said deposition to be read in evidence, the counsel for the defendants last named did then and there except. The counsel for the said defendants, Hoyne, Snowhook, and Smith, then proposed to prove that in respect to the vouchers which were transmitted to the government by the late marshal, said Charles N. Pine, on the 16th of March, 1859, for the expenses which had accrued for the previous December term of the court, said vouchers were in fact given by the said Charles N. Pine, without the actual payment of the moneys represented in such vouchers, but that such moneys were in fact paid out of the moneys received by him from the government,

after the date of the bond on which this suit was brought, and in support of this proposition, and to establish the same, the counsel for said defendants called, as a witness, Stephen Hosmer, who, being duly sworn, was asked by said counsel the following question: "Do you know of any instance or instances in which Charles N. Pine
213 took vouchers or receipts and forwarded them to Washington in his account with the department, without actually paying the money represented by such vouchers or receipts as having been paid? If so, state when, where, and from whom, such vouchers or receipts were taken."

But the counsel for the plaintiff then and there objected to the introduction of such evidence as proposed to be proved, which objection the court then and there sustained. To which decision of the court in refusing to allow the said defendants to examine said witness in that behalf, and in refusing to admit any evidence under said proposition, as aforesaid, said defendants did then and there except.

And the said defendant, E. S. Smith, further to maintain and prove the issues on his part, introduced as a witness, Hon. Thomas Drummond, and asked the witness the following question: "What request, if any was made to you by Philip A. Hoyne before the delivery of the bond, that his name might be erased from the bond?" The
214 witness then testified, that some time before the approval of the bond by me, Philip A. Hoyne stated to me that he had signed the bond, with others, for Pine, and that he had became dissatisfied, and that McGill and Pine had both agreed that his name should be taken off, and that he wanted it off, and that he was not willing that it should remain upon the bond.

Thereupon the counsel for the defendants, Hoyne, Snowhook, and Smith, asked the witness the following question: "When the sureties who acknowledged the execution of the bond before you appeared before you, did you call their attention to the erasure of the name of P. A. Hoyne?" To which the witness answered: "I may have done so, but I am not positive on that point. I am inclined to think I did; think I handed to each one of them the bond, and asked them if they signed it. I don't know that they read it."

And the said defendant, E. S. Smith, further to maintain and prove the said issues on his part, called Philip A. Hoyne as a witness, who, being duly sworn, testified as follows: "I signed
215 the bond, with others, which was circulated for signatures by J. W. McGill; soon after, and some days before it was approved by Judge Drummond, I became dissatisfied, and requested Mr. McGill and Pine that my name be erased, and they promised to do it. Not being able to get hold of the bond to do it. (when I asked McGill for it he would say that Pine had it, and when I asked Pine he would tell me that McGill had it,) it occurred to me that Judge Drummond had to approve the bond, and that I would go to him with my objection. I accordingly spoke to Judge Drummond, and told him that I had signed the bond, and had become dissatisfied, and wanted my name erased; that McGill and Pine had both promised me it should be; that I could not get it done, and that I was afraid they were fooling me; that I wanted my name off the

bond, and that I could not consent to have it there at all. Judge Drummond told me that he had not then seen the bond officially, and that, in justice to the other signers of the bond, I should see them and tell them all that I wanted my name off. I accordingly, in a very short time spoke to all of the parties who had signed the
216 bond, except E. S. Smith, who was then absent from the city, and I told them I wanted my name off the bond, and was not willing to let it remain there as one of the sureties. This was before the bond was approved by the court; and a few days thereafter I asked Judge Drummond if my name had been erased, and he said it had. When it was erased, and by whom, I do not know."

To the evidence of Judge Drummond and Philip A. Hoyne, on the part of the defence, the plaintiffs objected as incompetent, because it did not appear that Smith had executed the bond in reference to or on account of Philip A. Hoyne having signed it, and because the plea, *non est factum*, was not verified by affidavit, and it was admitted, subject to the question as to its competency. It was here admitted by the plaintiff that the defendant, E. S. Smith, was not in the city when the said bond was presented to and approved by the court.

And the counsel for the defendants, Hoyne, Snowhook, and Smith, further to maintain and prove the issues on their part, pro-
217 posed to prove that at and before the time the government advanced to defendant, C. N. Pine, the $2,500 mentioned in said treasury transcript, the plaintiff already had notice that said C. N. Pine was a defaulter to the government to a large amount, and, in support of this proposition, offered in evidence two certain letters, in the words and figures following, to wit:

(*1st letter.*)

"CHICAGO, *Oct.* 19, 1859.

Hon. JACOB THOMPSON,
Sec'y of the Interior, Washington, D. C.

SIR: We are compelled, by a knowledge of recent events, which we possess, to request, as bail of Charles N. Pine, esq., U. S. marshal of this district, that we may be released on his official bond.

We make this request from no motives of personal or political hostility to Mr. Pine. We are both known to the President, Hon. John Slidell, and others, not only as political but personally the friends of Mr. Pine and the administration.

218 We regret, therefore, that self-preservation, the first law of necessity, compels us to urge this request upon our personal account first, and next, that it may lead to some action as far as the government is concerned.

It is due to the government that we should be protected on account of the share it may be called upon to bear in any defalcation, in case our fears or apprehensions are well founded.

We now distinctly notify your department and the government that Mr. Pine is largely, we fear hopelessly, in arrear for money re-

ceived by him of defendants in execution, and which he fails to pay over, when called for, to the persons entitled to receive such moneys, and that the amount of such moneys is some four or five thousand dollars, we think—more even than this.

Second. We charge that Mr. Pine does not faithfully apply his official moneys, received from the U. S. treasury upon his drafts, to the payment of what the law designs and appropriates it to;
219 but that he directs it, and has directed it, to the payment of private debts and expenses, among which is the support and management of a political newspaper in Chicago, known as the Chicago Herald.

And we further distinctly charge, that upon our information and belief, the total deficit of Mr. Pine's official accounts, arising from the causes above stated, now amounts to over eleven thousand dollars, ($11,000.) In regard to the newspaper which Mr. Pine is supporting, we want it understood that it reflects our own political opinions, and were it not for the risk we are assuming in ultimately footing its entire cost, perhaps, as Mr. Pine's official sureties, we should be glad to see it sustained.

But we must, and we do, protest against this unauthorized expenses of an officer of no pecuniary ability himself, and constantly increasing the ultimate amount of his inevitable defalcation to the government as an officer, which amount his sureties will become liable to pay.

We make this communication in confidence, with a view to
220 our own release, and that, as in the case of "R. R. Carpenter," who was formerly disbursing agent of Treasury Department in this city, a new or further official bond may be required of Mr. Pine. If this is not done, it will be for us then to determine upon such further measures as we may deem necessary for our own security.

But we especially desire that this communication may receive your immediate attention. The knowledge of its being forwarded will remain entirely with the signers until sufficient time elapsed for receipt of a reply.

We have the honor, most respectfully, to subscribe ourselves your ob't serv'ts,

THO. HOYNE.
RICH'D J. HAMILTON.

To the above letter, written on three pages of letter paper, numbered 1, 2, and 3, was attached the following certificate:

"DEPARTMENT OF THE INTERIOR.

"I hereby certify that the foregoing, on pages 1, 2, and 3, is a true copy from the files of this department. In testimony whereof
221 I have hereto signed my name and caused the seal of the department to be affixed, this 1st day of March, A. D. 1861.

[L. S.] "MOSES KELLY,
"*Acting Secretary.*"

(*2d letter.*)

"DEPARTMENT OF THE INTERIOR,
"*Washington, October 25th*, 1859.

"GENTLEMEN: Your communication of the 19th instant has raised questions as to the authority to relieve you from further liability upon the marshal's bond and as to the power to require a new bond to be given, and the same have been this day submitted to the Attorney General for his official consideration.

"I am, sirs, very respectfully, your ob't serv't,
"J. THOMPSON, *Secretary.*

"THOS. HOYNE and RICH'D J. HAMILTON, Esq's,
Chicago, Illinois."

222 But to the admission of said letters in evidence the counsel for the plaintiff objected; which objection the court then and there sustained, and refused to admit in evidence the said letters, or either of them. To which decision of the court, and refusal to admit said letters in evidence, the counsel for the defendants last named did then and there except.

And no other or further evidence being offered by either of the said parties, except evidence which was confined exclusively to the allowance to said Pine of certain items in his account with the government, which items had been disallowed to him by the government, the counsel for the defendant, Smith, then moved the court, upon the evidence aforesaid, to instruct the jury as follows:

"1st. If the jury believe from the evidence that the name of P. A. Hoyne was erased from the bond in suit in this case without the knowledge or consent of E. S. Smith, one of the defendants, and that he did not, to Judge Drummond, or any one else, acknowledge the bond as his, subsequent to such erasure, the jury should find
223 the issue for him, defendant Smith."

"2d. The jury are further instructed, that the law places the burthen of proving such consent upon the plff. in this suit, and if they fail to make such proof, the jury should not find a verdict against said Smith in this case."

"3d. It being admitted by the parties to this suit that E. S. Smith, one of the defendants in this suit, was not in town at the time the bond sued on in this case was approved, and there being no evidence that he ever in any way consented to the erasure of the name of P. A. Hoyne as one of the sureties on said bond, it cannot be admitted as the foundation of any verdict against him, Smith, in this case."

"4th. That notice to Judge Drummond, who approved of the bond for the government, of the erasure of the name of P. A. Hoyne, is notice to the government."

224 "5th. If the jury believe from the evidence that the name of P. A. Hoyne was erased from the bond after all had signed

it, and that Judge Drummond inserted the names of the obligors after the erasure, and with notice thereof, without the knowledge or consent of Smith, then he is not liable in this action."

"6th. That the fact that several had signed before, and others did sign after defendant Smith, is a circumstance and evidence competent for the jury to consider, to show that Smith signed, and was not to be liable without his consent, if any one of the persons signing the bond should be discharged, with notice to the officer of the government who approved of the same."

Each and all of which said instructions the said court refused to give to the said jury. To which said refusal of the said court to give the said instructions moved for as aforesaid, the counsel for the said defendant, Smith, did then and there except.

225 The counsel for the said defendants, Hoyne, Snowhook, and Smith, then moved the court, upon the evidence aforesaid, to instruct the said jury, as follows.

"1st. That before the plaintiff can recover in this case for money received by the principal, Charles N. Pine, before the bond given in evidence was executed, it must show that such money was actually in his hands, as marshal, at the time of the execution of the second bond."

"2d. If the jury shall find that, at the time of the execution of the bond given in evidence, Charles N. Pine had no money in his hands which he had before received from the plaintiff, then the sureties on this bond can only be held liable for the faithful application of the moneys received by him after its execution; and in determining the amount for which they are answerable in this suit, the jury should credit them with all moneys paid out by said Pine, on account of the plaintiff, after the execution of said bond, whether said moneys were paid out before or after the receipt of moneys by him from

226 the plaintiff, provided said moneys were so paid out by him in the regular course of his duties as marshal, and such as he was by law required to pay for and on account of the plaintiff."

"3d. The law requires of the plaintiff in this case to prove, affirmatively, the amount of money actually received by Pine, the marshal, from the United States, after the approval of his bond, to wit, on the 2d day of March A. D. 1859; and if, from all the evidence in the case, the jury believe that he, Pine, as U. S. marshal, actually and faithfully, in the proper discharge of his duties as such marshal, disbursed or paid out subsequent to the said 2d day of March, A. D. 1859, in discharge or liquidation of any claims or fees due from the United States, either to him *him* or to others entitled to receive the same through him as marshal, an amount equal to what the proof in this case shows him to have actually received from the United States, subsequent to the said 2d day of March, A. D. 1859, then they should return their verdict for the defendants."

227 Each and all of said instructions the said court refused to give to the said jury, but on the contrary "the court instructed the jury that the treasury transcript, which had been offered in evidence by the plaintiffs, was made, bylaw, competent evidence

prima facie, of the amount due from the said C. N. Pine, as marshal to the United States, and there being in this case no evidence before the jury contradicting such transcript, it would be their duty to find for the plaintiffs the amount shown by the said transcript to be due, less such items in the said transcript as had been disallowed said plaintiff by the court; that the balance shown to be due by said transcript, being the sum of $4,920 96, and out of this amount the court having disallowed different items amounting in the whole (as was agreed by the counsel on both sides) to the sum of $1,530 96, which disallowments were to be deducted from the said amount of $4,920 96; that for the balance the plaintiffs were entitled to a verdict."

To which said instructions by the court, and also said refusal
228 to give the said instructions moved for as aforesaid by the counsel for the defendants last named, the said defendants, Hoyne, Snowhook, and Smith, did then and there except, and prayed that the said court would sign and seal this bill of exceptions, which is done accordingly.

(Before signing this bill of exceptions I think it proper to state, in relation to instructions given and refused, inasmuch as all the evidence is not set forth, that the defense conceded on the trial that the signatures to the bond were genuine, and that the money stated in the transcript was all duly received by C. N. Pine, the marshal, but the defense was placed solely on the following grounds: 1st, that there was an erasure of the name of Philip A. Hoyne apparent on the bond; 2d, that Smith was not liable on the bond, in consequence of such erasure, under the circumstances stated; 3d, on the supposed defenses contained in the evidence rejected by the court.)

THOMAS DRUMMOND. [SEAL.]

229 Endorsed: Filed Dec. 14, 1861.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the eighteenth day of October, A. D. 1862, the said defendant, Ezekiel S. Smith, sued out a writ of error in the above-entitled cause in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you between the United States of America, plaintiffs, and against Isaac Cook, Thomas Hoyne, Ezekiel S. Smith, Iram Nye, George D. Kellogg, and William B. Snowhook, impleaded with Charles N. Pine, Ben-
230 jamin F. Pine and Breckenridge F. Blackburn, defendants, a manifest error hath happened, to the great damage of the said defendants, impleaded as aforesaid, as by the complaint of the said defendant, Ezekiel S. Smith, appears, and it being fit that the error,

if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Su-
231 preme Court of the United States this eighteenth day of October, in the year of our Lord one thousand eight hundred and
[L. S.] sixty-two, and of our independence the 87th year.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed, Oct. 18, 1862.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 24th day of October, A. D. 1862, the following appeal bond was filed in said cause, to wit:

Circuit court of the United States for the seventh circuit and northern district of Illinois.

THE UNITED STATES OF AMERICA, *v.* ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, GEORGE D. KELLOGG, and WILLIAM B. SNOWHOOK, impleaded with CHARLES N. PINE, BENJAMIN F. PINE, and BRECKENRIDGE F. BLACKBURN.	In error.

Know all men by these presents that we, Ezekiel S. Smith
232 and Theodore Newell, are held and firmly bound unto the United States of America in the penal sum of five hundred dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly, and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this twentieth day of October, A. D. eighteen hundred and sixty-two. Whereas the above-named Ezekiel S. Smith hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the seventh circuit and northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Ezekiel S. Smith shall prosecute said writ of error to

effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and
233 remain in full force and virtue.

E. S. SMITH. [SEAL.]
T. NEWELL. [SEAL.]

Sealed and delivered in the presence of—

Endorsed: Approved.

THOMAS DRUMMOND.

Filed Oct. 24, 1862.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 5th day of November, A. D. 1862, the citation issued in this behalf was filed in the office of the clerk of said circuit court, and reads as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed
234 in the clerk's office of the court, for the trial of impeachments and the correction of errors of the circuit court of the United States for the seventh circuit and northern district of Illinois, wherein Isaac Cook, Thomas Hoyne, Ezekiel S. Smith, Iram Nye, George D. Kellogg, William B. Snowhook, impleaded with Charles N. Pine, Benjamin F. Pine, and Breckenridge F. Blackburn are plaintiffs in error, and the said United States of America is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Drummond, judge of the circuit court *of the circuit court* of the United States for the seventh circuit and northern district of Illinois, this 4th day of November, in the year of our Lord one thousand eight hundred and sixty two.

THOMAS DRUMMOND.

235 STATE OF ILLINOIS,
Cook County, ss:

Joseph W. Smith, being duly sworn, on oath, says that he served the within citation upon E. C. Larned, esq., United States district attorney for the circuit court of the United States for the seventh circuit and northern district of Illinois, by delivering to him a true copy thereof, on this 5th day of November, A. D. 1862.

JOSEPH W. SMITH.

Subscribed and sworn to before me this 5th day of Novem-
[SEAL] ber, A. D. 1862.

MILES ALMY, *N. P.*

Endorsed: Filed Nov. 5, 1862.

WM. H. BRADLEY, *Clk.*

236 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in the cause wherein the United States of America was plaintiff and Isaac Cook, Thomas Hoyne, *et al.*, were defendants, as the same appears from the records of said court now remaining on file and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in Chicago, this 15th day of November, A. D. 1862, and of our independence the 87th year.

[SEAL.] WM. H. BRADLEY, *Clk.*

237 Supreme Court of the United States of America, of the December term, A. D. 1862.

ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, GEORGE D. KELLOGG, WILLIAM B. SNOWHOOK, impleaded with CHARLES N. PINE, BENJAMIN F. PINE, and BRECKINRIDGE F. BLACKBURN, plaintiffs in error,

vs.

THE UNITED STATES OF AMERICA, defendant in error.

} Error to the circuit court of the United States.

Assignment of errors of the plaintiffs, Smith, Hoyne, and Snowhook.

And afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States of America, come the said Ezekiel S. Smith in propria persona, and the said Thomas Hoyne in propria persona, and attorney for William B. Snowhook, and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1st. The court erred in admitting the bond sued upon to be read in evidence to the jury against the objection of the defendants then taken.

238 2d. The court erred in refusing to admit the evidence offered by the defendants, contained in execution document No. 53 of 36th Congress, 1st session, on page 32, under the stipulation in the case.

3d. The court erred in refusing to admit the deposition of David P. Martin.

4th. The court erred in refusing to permit the defendants to prove that the marshal, at the time the bond was delivered, to wit: March 2d, 1859, had no funds of the plaintiff, and that the expenses of the prior December term had not been paid by the marshal; that he had, in fact, used all the monies of the plaintiff received prior to that time, and that he received no funds from the plaintiff with which those expenses were paid until after March 2d, 1859.

5th. The court erred in refusing to permit the defendants to prove, in respect to the vouchers which were transmitted to the government by Marshal Pine, March 16th, 1859, the expenses that accrued for the previous term, and that in fact those vouchers were paid out of monies received by him from the government after March 2d, 1859, as proposed to be proved by Stephen Hosmer.

6th. The court erred in refusing to permit the defendants to prove that the plaintiff had notice from the defendants that Marshal Pine was a defaulter prior to the payment of the $2,500 mentioned in the transcript, and in refusing to admit in evidence the letters of Hoyne and Hamilton to Secretary Thompson, certified by Moses
239 Kelly, acting Secretary, and the letter from Secretary Thompson to Hoyne and Hamilton, which appear in the record in this case.

7th. The court erred in refusing to give to the jury the instruction No. 1, asked by defendants, Hoyne, Snoowhook, and Smith.

8th. The court erred in refusing to give to the jury instruction No. 2, asked by defendants, Hoyne, Snoowhook, and Smith.

9th. The court erred in refusing to give to the jury the instruction No. 3, asked by defendants, Hoyne, Snoowhook, and Smith.

10th. The court erred in refusing to give to the jury the fourth and last instruction asked by defendants, Hoyne, Snoowhook, and Smith.

11th. The court erred in instructing the jury to find for the plaintiff for the sum of $4,920 96 less the sum of $1,530 96 in positive terms, thereby taking from the jury the right to pass upon the evidence in the case.

And the said Thomas Hoyne, William B. Snowhook, and Ezekiel S. Smith, pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and for naught held, and that they may be restored to all things which they have lost by reason of said judgment.

240 And afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States of America, comes the said Ezekiel S. Smith in propria persona, and says that in the records and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error as to him in this, to wit:

1st. The court erred in refusing to give to the jury the instruction No. 1, asked by the defendant, Smith.

2d. The court erred in refusing to give to the jury instruction No. 2, asked by defendant, Smith.

3d. The court erred in refusing to give to the jury instruction No. 3, asked by defendant, Smith.

4th. The court erred in refusing to give to the jury instruction No. 4, asked by defendant, Smith.

5th. The court erred in refusing to give to the jury instruction No. 5, asked by defendant, Smith.

6th. The court erred in refusing to give to the jury the sixth and last instruction, asked by defendant, Smith.

And the said Ezekiel S. Smith, prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as to him may be reversed, annulled, and for naught held, and that he may be restored to all things which he has lost by reason of said judgment.

E. S. SMITH, *pro se.*
THOMAS HOYNE,
Pro se, and Att'y for Wm. B. Snoowhook.

IN THE

United States Supreme Court,

DECEMBER TERM, 1864.

ISAAC COOK, ET. AL., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR PLAINTIFF IN ERROR.

BY E. S. SMITH.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 S. CLARK ST., CHICAGO.
1864.

IN THE

UNITED STATES SUPREME COURT.

DECEMBER TERM, 1863.

No. 199.

ISAAC COOK, ET AL.
Plaintiffs in Error,
v.
THE UNITED STATES,
Defendant in Error.

DEBT ON OFFICIAL BOND.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT OF PLAINTIFFS IN ERROR.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.
1864.

STATEMENT OF THE CASE.

This was an action of debt upon the official bond of Charles N. Pine, as United States Marshal for the Northern District of Illinois.

The bond bears date February 28, 1859, and approved by the District Judge March 2, 1859, and on the same day filed for record with the clerk of said district (p. 4, 5 of record).

Declaration on the bond, in usual form, was filed February 4, 1861, claiming that Pine, as such Marshal, had received money and failed to pay the same to the plaintiff, &c. (p. 2, 3 of record).

Defendants Hoyne and Snowhook interposed pleas, 1st. *Non est factum.* 2d. That Pine did faithfully perform the duties of the office of Marshal, and did pay over all moneys, &c., (p. 6, 7).

Defendant Smith filed separate pleas, 1st. *Nil debet.* 2d. *Non est factum* (p. 11).

On all these pleas an issue was joined.

Nov. 26, 1961, the death of defendants Dewey and Hamilton was suggested (p. 11).

And on the same day the default of defendants Cook and Nye was entered (p. 12).

The trial upon the issues commenced before the court and a jury, and on the 28th day of November, 1861 (p. 12), verdict was rendered for the plaintiff; damages, $3,796.80 (p. 12).

On the 14th day of December, 1861, judgment was rendered upon the verdict (p. 13).

The account sued upon in this case, being very much complicated, in the several statements of balances and amended balances, and covering a short term of the Marshal's official duties, prior to the making of this bond, and while other parties were sureties, we deem it necessary to make a brief statement to show the exact position of the claim.

The account debit against the Marshal, as made up, commencing with warrant Sept. 21, 1858, $3,740, and warrant Sept. 29, 1858, $8,000 (p. 18).

March 1, 1859, a balance is claimed against Pine of $5,579.53, a small correction made after that date (p. 21).

To make this balance there were items charged against Pine which were not allowed at that date.

The account is charged, April 2, 1859, with $7,219.20, and June 25, 1859, $1,958.09 (p. 25).

The account is also charged, August 4, 1859, $7,400, and Nov. 9, 1859, $2,500 (p. 36).

The four last warrants were all that Pine received after the bond in question was given. (Approved March 2, 1859.)

Total of four warrants $18,777.29, together with the balance of March 1, 1859, $5,579.53, makes $24,356.82.

The balance, as stated in last account, August 25, 1860, on (p. 54) is $4,920.96.

Take this balance from the total receipts, after March 2, 1859, including prior balance of March 1, 1859, the account shows payments allowed by the government after the date of the bond of $19,425.86. This amount shows an excess over the four warrants received after March 2, 1859, of $648.57; deduct the balance of the last account, $4,920.96, from the balance of March 1, 1859,

$5,579.53, and the result is the same, $648.57 in favor of the sureties.

The account shows that a large amount of charges, prior to March 1, 1859, were not allowed Pine, in any of the statements, so that these items were left unsettled.

Take the balance of March 1, 1859, $5,579.53 from the account, it would show the sum of $648.57 in favor of Pine, upon the account as it should be made, against the sureties on the second bond, the one now in suit showing whatever defalcation there might be against Pine March 1, 1859, it should be chargeable to his first bond.

The warrant of Nov. 9, 1859, which was included in the account, was issued to Pine, after notice to Secretary Thompson of his defalcation. (Letter of Thos. Hoyne and R. J. Hamilton, p. 111).

INSTRUCTIONS ASKED BY DEFENDANT SMITH.

1st. If the jury believe, from the evidence, that the name of P. A. Hoyne was erased from the bond in suit in this case, without the knowledge or consent of E. S. Smith, one of the defendants, and that he did not, before Judge Drummond, or any one else, acknowledge the bond as his deed, subsequent to such erasure, the jury should find the issue for him, defendant Smith.

2d. The jury are further instructed, that the law places the burden of proving such consent upon the plaintiff in this suit, and if they fail to make such proof, the jury should not find a verdict against said Smith in this case.

3d. It being admitted by the parties to this suit, that E. S. Smith, one of the defendants in this suit, was not in town at the time the bond sued on in this case was approved, and there being no evidence that he ever, in any way, consented to the erasure of

the name of P. A. Hoyne, as one of the sureties on said bond, it cannot be admitted as the foundation of any verdict against him, Smith, in this case.

4th. That notice to Judge Drummond, who approved of the bond for the government, of the erasure of the name of P. A. Hoyne, is notice to the government.

5th. If the jury believe, from the evidence, that the name of P. A. Hoyne was erased from the bond after all had signed it, and that Judge Drummond inserted the names of the obligors, after the erasure, and with notice thereof, without the knowledge or consent of Smith, then he is not liable in this action.

6th. That the fact that several had signed before, and others did sign after Smith, is a circumstance and evidence competent for the jury to consider, to show that Smith signed and was not to be liable, without his consent, if any one of the persons signing the bond should be discharged, with notice to the officer of the government who approved of the same.

Each and all of said instructions asked the court refused to give to the jury, to which refusal counsel for defendant Smith excepted (p. 113).

INSTRUCTIONS ASKED BY DEFENDANTS HOYNE, SNOWHOOK AND SMITH.

1st. That before the plaintiff can recover in this case, for money received by the principal, Charles N. Pine, before the bond given in evidence was executed, it must show that such money was actually in his hands, as Marshal, at the time of the execution of the second bond.

2d. If the jury shall find that, at the time of the execution of the bond given in evidence, Charles N. Pine had no money in his

hands which he had before received from the plaintiff, then the sureties on this bond can only be held liable for the faithful application of the moneys received by him after its execution; and in determining the amount for which they are answerable in this suit, the jury should credit them with all moneys paid out by said Pine on account of the plaintiff, after the execution of said bond, whether said moneys were paid out before or after the receipt of moneys by him from the plaintiff, provided said moneys were so paid out by him in the regular course of his duties as Marshal, and such as he was by law required to pay for, and on account of, the plaintiff.

3rd. The law requires of the plaintiff in this case, to prove affirmatively the amount of money actually received by Pine, the Marshal, from the United States, after the approval of his bond, to wit: on the 2d day of March, A. D. 1859; and if, from all the evidence in the case, the jury believe that he, Pine, as U. S. Marshal, actually and faithfully, in the proper discharge of his duties as such Marshal, disbursed or paid out, subsequent to the said 2d day of March, A. D. 1859, in discharge or liquidation of any claims or fees due from the United States, either to *him* or to others entitled to receive the same through him as Marshal, an amount equal to what the proof in this case shows him to have actually received from the United States subsequent to the said 2d day of March, A. D. 1859, then they should return their verdict for the defendants.

Each and all of said instructions the court refused to give to the jury.

INSTRUCTIONS GIVEN BY THE COURT.

The treasury transcript which had been offered in evidence by the plaintiff, was by law competent evidence *prima facie* of the amount due from said C. N. Pine as Marshal, to the United States; and there being in this case no evidence before the jury contradicting such transcript, it would be their duty to find for the

plaintiff the amount shown by the said transcript to be due, less such items in the said transcript as had been disallowed said plaintiff by the court; that the balance shown to be due by said transcript, being the sum of $4,920.96, and out of this amount the court having disallowed different items, amounting in the whole (as was agreed by the counsel on both sides) to the sum of $1,530.96, which disallowments were to be deducted from the said amount of $4,920.96; that for the balance the plaintiff was entitled to a verdict.

To which instruction by the court, and also said refusal to give the said instructions moved for as aforesaid by the counsel for the defendants, said defendants, Hoyne, Snowhook & Smith, excepted.

ASSIGNMENT OE ERRORS BY SMITH, HOYNE & SNOWHOOK.

1st. The court erred in admitting the bond sued upon to be read in evidence to the jury, against the objection of the defendants then taken.

2d. The court erred in refusing to admit the evidence offered by the defendants, contained in execution document No. 53 of 36th Congress, 1st session, on page 32, under the stipulation in the case.

3d. The court erred in refusing to admit the deposition of David P. Martin.

4th. The court erred in refusing to permit the defendants to prove that the Marshal, at the time the bond was delivered, to wit., March 2d, 1859, had no funds of the plaintiff's, and that the expenses of the prior December Term had not been paid by the Marshal; that he had, in fact, used all the moneys of the plaintiff received prior to that time, and that he received no funds from the plaintiff with which these expenses were paid until after March 2d, 1859.

5th. The court erred in refusing to permit the defendants to prove, in respect to the vouchers which were transmitted to the Government by Marshal Pine, March 16, 1859, the expenses that

accrued for the previous term, and that in fact those vouchers were paid out of moneys received by him from the Government after March 2d, 1859, as proposed to be proved by Stephen Hosmer.

6th. The court erred in refusing to permit the defendants to prove that the plaintiff had notice from the defendants that Marshal Pine was a defaulter prior to the payment of the $2,500 mentioned in the transcript, and in refusing to admit in evidence the letters of Hoyne & Hamilton to secretary Thompson, certified by Moses Kelly, acting secretary, and the letter from secretary Thompson to Hoyne & Hamilton, which appear in the record in this case.

7th. The court erred in refusing to give to the jury the instruction No. 1, asked by defendants Hoyne, Snowhook & Smith.

8th. The court erred in refusing to give to the jury instruction No. 2, asked by defendants Hoyne, Snowhook & Smith.

9th. The court erred in refusing to give to the jury instruction No. 3, asked by defendants Hoyne, Snowhook & Smith.

10th. The court erred in refusing to give to the jury the fourth and last instruction asked by defendants Hoyne, Snowhook & Smith.

11th. The court erred in instructing the jury to find for the plaintiff for the sum of $4,920.96, less the sum of $1,530.96, in positive terms, thereby taking from the jury the right to pass upon the evidence in the case.

Assignment of Errors by Smith.

1st. The court erred in refusing to give to the jury the instruction No. 1, asked by defendant Smith.

2d. The court erred in refusing to give to the jury instruction No. 2, asked by defendant Smith.

3d. The court erred in refusing to give to the jury instruction No. 3, asked by defendant Smith.

4th. The court erred in refusing to give to the jury instruction No. 4, asked by defendant Smith.

5th. The court erred in refusing to give to the jury instruction No. 5, asked by defendant Smith.

6th. The court erred in refusing to give to the jury the sixth and ast instruction asked by defendant Smith.

POINTS BY SMITH, PLAINTIFF IN ERROR.

I.

Before any liability can an attach as against Smith, one of the plaintiffs in error upon the official bond of Pine, in this case, it is necessary for the United States to prove a signing and sealing in fact as his bond, and also a delivery of the bond on his part to the obligee.

II.

The alteration of the bond by the erasure of the name of Philip A. Hoyne, one of the persons signing the same as an obligor, without the knowledge or consent of Smith, renders the bond void as to him, and he thereby becomes discharged from all liability upon it.

POINTS BY ALL THE PLAINTIFFS IN ERROR.

III.

The plaintiffs in error are only liable as sureties upon the official bond of Pine for money received by him from the United States to be disbursed as Marshal, after the date of the approval and delivery of the bond.

IV.

The plaintiffs in error, as sureties of Pine, should have credit for all payments made by him for the United States on account of his office, after the approval and delivery of the bond, without reference to the date when the United States became liable for the debts or claims paid by Pine from the money received.

Dunlap's Laws of U. S., p. 65, act of Sept. 24, 1789, section 27, provides as to U. S. Marshal's, as follows:

"Before he enters on the duties of his office, *he shall become* "*bound* for the faithful performance of the same by himself and "by his deputies, before the judge of the District Court to the "United States, *jointly and severally, with two good and sufficient* "*sureties, inhabitants and freeholders of such district, to be ap-* "*proved by the district judge*, in the sum of twenty thousand dol- "lars, and shall take before said judge, as shall also his deputies "before they enter on the duties of their appointment, the follow- "ing oath, &c."

The same book, on page 387, act of April 10, 1806, provides that the bond of the Marshal shall be filed and recorded with the clerk of the court, &c.

I.

May it please the Court:

We will first consider the question as to the execution and delivery of the bond on our part, and try to show that there is no proof in the record to sustain the judgment.

The statute referred to, as we understand it, requires the Marshal, *with two sureties, to become bound before the district judge.* To do this, it is necessary for the Marshal and the sureties to unite, or

meet and perform the same act before the judge, perhaps not the same moment; but to become bound before the judge with sureties, means that the sureties and Marshal must appear before the judge and under his eye do whatever is necessary to constitute the obligation. The sureties must sign, seal, and deliver the bond before the judge, or acknowledge the same before him.

They are not bound until delivery; signing and sealing does not bind the parties. It is as necessary for them to appear before the judge to acknowledge the act, as it is to do the act itself.

The binding obligation of the principal and sureties must be performed before the judge.

The act of the parties before the judge the law designed to be such that there could be no question as to the fact that they had become bound.

It would seem that Congress understood this to be the meaning of the law, as in April, 1806, an act was passed requiring the bond to be filed and recorded, and that certified copies of the record of such bonds should be competent evidence in any court of justice. This we think must have been the intention of Congress, as we cannot suppose Congress would pass an act allowing a paper to become a record, and that record evidence, without the record contained evidence to show that the bond had been signed, sealed, acknowledged and delivered by the parties before the officer mentioned in the act.

The question cannot arise in this case, as to the validity of the instrument as a common law bond, because the government attorney did not so present the bond, or is it so claimed in the record. The suit was tried on the part of the United States upon the bond as one given under the act, and that the law had been complied with in its execution and delivery.

May it not be said that the act of Congress is, in fact, an enlarge-

ment upon the common law, as to execution and delivery, and its requirements enacted for the purpose of obtaining record evidence of execution and delivery, which could, in no way, be affected by death of witnesses. We submit, that it is an ancient rule of the common law, which has never been, in the slightest degree, departed from, that delivery, as an external act, distinct from, and independently of, the mere writing, sealing, signing and attesting of the paper, is an indispensable element in the constitution of a legal bond, or deed, without this the paper can have no effect. However complete a sealed paper may appear upon its face, it cannot, in strictness, be called a deed unless there be a delivery. Such is the law, beyond all dispute; therefore, to make the execution and delivery a matter of record, Congress, by the act, required of the Marshal and his sureties that all the acts necessary to become bound, and make a legal bond, should be performed and evidenced, before the District Judge. The delivery being the last act of the parties to perform to make the bond binding, it became necessary for each obligor to make acknowledgment of the execution and delivery thereof before the District Judge.

If, upon consideration, it shall appear that the act of Congress does not require the execution to be before the District Judge, and the delivery to him for the use of the United States, in the manner contended by us, then the question will be, did we deliver the bond, on our part, to the United States, as our deed, according to the rules of the common law? We shall assume that it will not be denied that a vital constituent to a bond is the delivery of it from the obligor to the use of the obligee. That it remains inchoate and inoperative until that act is completed.

Touchstone, p. 57;
2 Blackstone Com. 307;
Bovone v. *Adams*, 3 Wendell, 380;
Clark v. *Gibbs*, 10 Wendell 313;
Stillwell v. *Hubbard*, 20 Wendell, 45;
Jackson v. *Dunlop*, 1 Johns. Cas. 114;
Powers v. *Russell*, 13 Pickering, 75.

We apprehend none will doubt the doctrine that clear proof must be made; that the obligor to a bond absolutely parted with the possession of it, to the use for which it was executed, and when the intention to deliver is not made out, the execution will not give it validity and operation.

There must be proof of intention to deliver. The fact that the party signed and sealed the bond does not, in any way, show intention to deliver.

The proof, in this case, is not sufficient to raise even a slight presumption of delivery, much less a *prima facie* case.

In the case of *Jackson* v. *Perkins*, 2 Wendell, 308, it was held that acknowledging and recording of a deed only furnished presumptive evidence of its delivery.

Pawling v. *United States*, 4 Cranch, 219.

In this case it appears that the bond, upon its face, purported to be delivered absolutely, but proof was allowed to show a conditional signing and delivery. It also appears that when the parties signed and acknowledged, in the presence of witnesses, the names had been inserted in the body of the bond, and that it was complete so far as to their execution of it. The question as to the execution and delivery of the bond was a question of fact for the jury.

Duncan v. *United States*, 7 Peters, 435.

In this case it appears that the names of the obligors were inserted in the body of the bond when drawn, and the name of Thos. Duncan was also inserted, who did not sign. There were no witnesses, but the parties acknowledged the same before a notary public. It appears, from the case, that this bond was delivered, after acknowledged by the parties, to the Treasury Department, and that there was no proof to show any condition of signing and

delivery, except the mere fact of the name of Thomas Duncan appearing in the body of the bond. The court, in this case, say that the delivery of the bond, as well as the signatures of the parties, is a question of fact for the jury.

In *Murray* v. *Earl Stair*, ABBOTT, C. J., told the jury that "to "make the delivery conditional it was not necessary that any "express words should be used at the time, the conclusion was to "be drawn from the circumstances."

In the case of *Clark* v. *Gifford*, 10 Wendell, 315, the court say: "What the nature of the delivery was, whether absolute or con- "ditional, and what were the actual intentions of the parties, are "always questions of fact to be settled by the jury."

We submit, if the court please, that there can be no doubt as to the law upon these questions, and, therefore, we need only consider the proofs in the case bearing upon the execution and delivery of the bond on our part. It does not appear from the proof that Pine, or McGill, who appears to have acted in the matter, represented the government in that behalf, therefore the case stands as it would if Pine and McGill had volunteered their services without any authority or obligation on their part. It was a mere experiment, in the start, on the part of Pine and McGill, for the purpose of seeing whether sureties could be obtained. The signing and delivery to Pine, during the circulation for signatures, cannot possibly be said to indicate a delivery to the United States, or intention to deliver. The proof does not show one single word, act or thing, from which an inference can be drawn of intention, by that act, to deliver.

Let us consider for a moment, if the court please, the testimony on this point of the case, for the purpose of arriving at the facts as to the origin of the obligation. Mr. Hoyne said he signed the bond, with others, which was *circulated for signatures* by J. W. McGill. Judge DRUMMOND said Pine had difficulty in getting

sureties, and that Pine had told him that Hoyne objected to have his name on the bond; that he inserted the names in the bond when brought to him for approval, either by Pine or McGill.

This proof, we think, shows most clearly that McGill and Pine circulated the bond for signatures; that it was drawn up without a name, as obligor, being mentioned, except Pine, and, in fact, without date, as it will appear from an inspection of the bond. It was, in fact, circulated more like a subscription for names, and, when a sufficient number had signed it, required the act of consent to allow their names to be inserted as obligors to the bond, and to acknowledge the execution and delivery. It seems to us there can be no dispute as to the fact that the parties, signing in that form, and under such circumstances, could not have supposed, for a moment, that such signing was to be considered a delivery of the paper as their bond. It could not have been intended, on the part of any one of the sureties, to be a delivery. They did not sign before any officer authorized to certify to acknowledgment, and from what took place thereafter, it is conclusive evidence, to our mind, that the sureties did not consider the act a delivery, and in any way binding, until they appeared before the judge, and acknowledged the signing and sealing, after the names had been inserted and seals placed upon it.

We contend that there must be some proof to show a delivery; that there should be evidence of an act or word, whether formal or not, which show a delivery, or intention to deliver, the paper as our bond.

If there need be no evidence of a delivery, or consent to a delivery, except the mere fact that it is in the hands of the obligee, then there should certainly be some proof to show that, when signed, the paper had the legal form and effect of a bond, and that no act was necessary to make it a writing obligatory on the part of the party signing.

No presumption of a delivery can arise when the proof shows that the party signed a blank paper, or partially blank paper, without a word or act showing that he thereby intended to become bound, and that the holder had authority to fill in the name in the body of the bond, and place a seal thereto. But for the declaration of Judge Drummond, that he was acqainted with our signature, and he therefore approved of the bond, there would not be anything from which to infer that our name was upon the paper. The proof does not show anything, on our part, which can be considered an intention to become bound without something more being done. The bond has no witnesses, and does not contain the usual words of "signed, sealed, and delivered." The proof showed that the paper, when signed, was not, in form, a bond; that there is no words upon the paper showing sealing and delivery; no proof of any declaration or authority to complete the obligation. If, when all this appears, in the case, to be wanting, there is to be a presumption of delivery, the law must have undergone a great change. We submit, if the court please, that it was the duty of the government to enquire of the sureties to the bond, when acknowledging whether they had attached any condition to their executing the instrument.

We also submit, that it must appear that when the bond passed from the party signing, to the party receiving, it must have been a full and complete bond or it was of no effect. The delivery, by a third party, without proof of consent, would be void, for the reason the proof in the case repels all presumption that can arise from possession by the government at the time suit was brought.

II.

We propose, now, to consider the proof, in order to show that the alteration of the paper, or bond, after signed by all the parties, by the erasure of the name of Philip A. Hoyne, renders it void as to us.

The testimony upon this part of the case is from Judge Drummond and Philip A. Hoyne. On page 15, of the record, Judge Drummond testified as follows: "When this bond was brought "to me for approval, *it was precisely as it is now*, except the names "of the sureties were inserted by me, on the first part of the bond, "after the words, 'that we, Charles N. Pine, as principal.' It "was brought to me by either J. W. McGill, or defendant, C. N. "Pine. The erasure of Philip A. Hoyne's name was then just as "it appears now. Pine had difficulty in getting sureties, *and he "had, some time before, told me Philip A. Hoyne had objected to "having his name on the bond; and Hoyne afterwards said to me "he did not want his name on the bond.* I had not then seen the "bond. Afterwards, it was brought to me with Hoyne's name "erased. As I did not know the signatures of all the parties, I "held the bond several days, and the sureties came in, from time "to time, and acknowledged the execution of the bond before me, "*except defendant Smith.* I then approved the bond, at the date "of the certificate, and as I was personally acquainted with the "signature of defendant Smith, I certified thereto, as stated in my "certificate endorsed on the bond."

Being asked by defendant's counsel, if Smith had ever consented to the erasure of Philip A. Hoyne's name, he said, "I have no "knowledge on the subject."

On page 110, of the record, Judge Drummond, in answer to a question put to him by defendant Smith, testified as follows: "That "some time before the approval of the bond by me, Philip A. "Hoyne stated to me that he had signed the bond, with others, for "Pine, and that he had become dissatisfied, and that McGill and "Pine had both agreed that his name should be taken off, and that "he wanted it off, and that he was not willing that it should re-"main upon the bond."

On page 110, of the record, Philip A. Hoyne testified as follows: "I signed the bond, with others, *which was circulated for*

" *signatures by J. W. McGill.* Soon after, and some days before " it was approved by Judge Drummond, I became dissatisfied, and " requested Mr. McGill and Pine that my name be erased, and " they promised to do it. Not being able to get hold of the bond " to do it, (when I asked McGill he would say that Pine had it, " and when I asked Pine he would tell me that McGill had it,) it " occurred to me that Judge Drummond had to approve the bond, " and that I would go to him with my objection. I accordingly " spoke to Judge Drummond, and told him that I had signed the " bond, and had become dissatisfied, and wanted my name erased ; " that McGill and Pine had both promised me it should be ; that I " could not get it done, and that I was afraid they were fooling me ; " that I wanted my name off the bond, and that I could not consent " to have it there at all. Judge Drummond told me that he had " not *seen the bond officially*, and that, in justice to the other sign- " ers of the bond, I should see them, and tell them all that I wanted " my name off. I accordingly, in a very short time, spoke to all of " the parties who had signed the bond, *except E. S. Smith, who was* " *then absent from the city*, and I told them that I wanted my name " off the bond, and was not willing to let it remain there as one of " the sureties. This was before the bond was approved by the " court, and a few days thereafter I asked Judge Drummond if my " name had been erased, and *he said it had.* When it was erased, " and by whom, I do not know."

It is from the facts and circumstances, attending the whole transaction, that the jury were to determine whether the name of Mr. Hoyne was erased after we signed, and without our knowledge and consent. The question is, does the testimony tend to show that the erasure was without our consent, and after we had signed the paper? We say it most certainly does. The proof is so clear and convincing that there cannot be room for doubt.

It is evident that the parties, when signing the paper upon its being circulated for signatures, expected that several names were to be obtained upon the paper before it could be determined what the next step would be towards making a writing obligatory.

Judge Drummond testified that Pine had difficulty in obtaining sureties upon his official bond. Hoyne said that the bond was circulated for signatures. This being true, beyond a question, we ask, can there be any doubt of the fact that other names were to be obtained after we had signed the paper, signifying our willingness to be one, with others. There is further proof in the case, to be found in the order in which the parties, and in the fact that others did sign thereafter, which will appear from an inspection of the bond itself, and show that those who did sign became alike parties, and, when they had so become parties, the rights of all were alike to be considered, and the government could not, nor could its agents, consent to an alteration without the knowledge or consent of the parties. The direction of Judge Drummond, to Mr. Hoyne, to notify all the signers, most clearly shows that such notice and consent was necessary; without it no one could be bound after the alteration, unless consenting thereto.

There is no difference between a condition, or understanding, that other parties should sign the bond, and by naming the persons who were to sign it could only be considered, perhaps, a greater or less responsibility, as might be the condition of the party named. The reason of the rule as to the condition imposed, or the fulfillment of the understanding is, that it adds to the bond parties who were to bear a portion of the burdens, if there should be any; whether that be greater or less, cannot change the rule. It is, therefore, evident that each party, when he gave his consent, by placing his name upon the paper, as one to stand with others, must have understood that there was a condition, and further, that no one was to be bound by that act until names sufficient had been obtained to satisfy all, and then, and not till then, consent of delivery be given. This being so, we think that when the names were obtained none could be erased without the consent of all, or such as consented to be bound thereafter.

The government having notice of all this, an acceptance of the bond, with an alteration, could only bind such as consented to its delivery with such alteration.

If it is considered that the signing, under the circumstances of case, became an obligation, and the paper, when all had signed, became a writing obligatory on the part of all who signed it, then it seems to us that the application of Hoyne, and his statement to Judge Drummond, to be released, and to have his name erased, was notice to the United States, and whatever alteration was made in the bond, it became the act or consent of the goverument, and can only bind those who consented to the erasure.

By this notice Judge Drummond was advised of the condition of the bond, so far as to the fact that Hoyne had signed, and when he had the bond before him for approval the name was erased, and he must have known that the name had been erased after we had signed. It is fair to presume that Judge Drummond had notice from Hoyne, or some one, that others had signed, as he told Hoyne in justice to others, he must notify them that he wanted his name off the bond.

If the bond had been in the hands of Judge Drummond, at the time Hoyne made the objection to his name remaining, and had then seen the uames, and the order of signing, and had witnessed the erasure of the name, the facts, so far as we are concerned, could be no more satisfactory than they are now. There is not even a pretense that we saw the bond after the erasure, or had any knowledge of it.

The liability of a surety can only be fixed by the strict rules of law, and no equities can exist between the sureties and the creditor.

Take all the facts and circumstances together and the proofs will show positive the correctness of the position we take. Yes, the testimony is complete as could be required, as the court said in the case of *Pawling*, in 4 Cranch, 223.

It may be said that the alteration does not appear to have been made by the agent of the defendant in error; that it may have

been made by a stranger; and that it does not appear from the proofs when it was made. We will answer these positions as follows:

1st. The bond is what is called a statutory bond, as we have before shown. The law provides how it shall be given, and how the parties are to become bound; and the officer who shall take the bond on the part of the government; therefore the District Judge, in this matter, was the agent, and his acts and his consents are those of the government.

2d. It is true that the proofs do not show the hand who made the erasure of Mr. Hoyne's name in fact. But it could not have been made by a stranger, and must have been made after all the parties had signed, and before the acknowledgment before the District Judge. The point of time can make no difference; it is the same whether altered after the acknowledgment or before, if, in fact, it was altered after the parties signed and had passed it from their hands. The alteration, after all had signed, must be considered the same, in effect, as it would be if all the parties had signed at one and the same time, and had then given the bond to Pine to be presented to Judge Drummond, for approval and acceptance in behalf of the government. No alteration can be made after it leaves the hand signing without consent, and if the agent of the government had notice that there was an alteration made after it was signed, and then, before approval and acceptance, the agent had knowledge that there had been, in fact, a name erased, and that we had no notice, and had not given our consent, the alteration is chargeable direct to the government.

O'Neal v. *Long*, 4 Cranch, 60.

This was a case of an appeal bond, signed and presented for approval and rejected, and then another name added, and then approved, and it was held that the alteration, by increasing the sureties rendered it void. Thus, it appears, that this alteration was after signing and before delivery and approval.

United States v. *Linn and others*, 1 Howard, 104.

This was a case of an official bond of a receiver of public moneys, and was signed and approved, (not acknowledged) but signed in the presence of witnesses, and containing a declaration that it was sealed and delivered in the presence of the witnesses, naming them, (unlike the bond under consideration in that respect.)

The alteration complained of was the placing seals to it after approval, and before Linn transmitted it to the plaintiff. Thus, it appears, that the alteration in this case, was made, in fact, before delivery, and after signing, but without the declaration of sealing and delivery upon the bond, and it was held by the court, (p. 111) that if the alteration had been made by the plaintiffs it would make the deed void. The proof showed that William Linn made the alteration after he had received the bond to transmit to the plaintiff. The plea, it is true, did not state who made the alteration, but the fact fully appeared by the case.

It seems to us that this case shows, that if the plea had stated that Linn made the alteration, it would have been chargeable to the government.

If we are correct in this, then, in the case under consideration, the acceptance and approval by Judge Drummond, being required by law, fixes the knowledge upon the defendant in error of all the facts stated by the witnesses touching the bond.

It will be observed that the law, in cases of receivers of public money, does not state who shall approve and accept the bond. (Dunlap's Laws U. S., p. 289). The law simply provides, that a bond, with approved surety, shall be given, whereas, in cases of United States Marshal, the law provides that the Marshal, with his sureties, shall become bound before the Judge of the District Court, and that the District Judge shall approve of the surety, and the bond shall be filed and recorded.

III.

If the court please, we will now consider the points made by the plaintiffs in error.

We say that the plaintiffs, as sureties, are only liable for the faithful disbursement, by the marshal, of money received by him from the government, after the date of the execution and delivery of the bond to the district judge, which was March 2d, 1859.

By referring to page 25 of the record, it will appear, as stated on page 4 of this brief, that the marshal received but four warrants after that date, as follows:

April 2d, 1859,	$7,219 20
June 25th, 1859,	1,658 09
August 4th, 1859,	7,400 00
November 9th, 1859,	2,500 00
Total	$18,777 29

In our statement on page 4, we erred in stating the warrant of June 25th, 1859; it should be $1,658, instead of $1,958. (See p. 25). The sum total, as above stated, is correct—$18,777.29. The warrant of November 9th, 1859, will receive special notice hereafter. For the present we will consider the errors made on the trial against the plaintiffs in error, upon the statement of account, as given in evidence by the United States, which embraces the four warrants above mentioned, and a balance found to exist against Pine, March 1st, 1859, of $5,539.82. (See p. 21 of record.)

It appears, from the record, that Mr. Pine had been acting as marshal for some time prior to March 2d, 1853, under commission from the President, he having given, as we understand, official bond, so that the sureties upon the bond of March 2d, 1859, in no

way become responsible for the faithful discharge of the duties of the marshal prior to the date of their obligation.

There may be no doubt as to the fact that Pine ought to have had in his hands a balance of $5,579.53, but if the fact was otherwise, and that fact well known to the officers of the government, we think it unjust for the United States to attempt to collect that amount from the sureties upon the bond of March 2d, 1859; such an attempt can only be justified upon the false idea that a government can do no wrong.

We submit, if the court please, as a proposition of law, that the sureties in this case, who undertook to stand responsible for the faithful discharge of the official duties of Mr. Pine, after March 2d, 1859, can not be made liable for any act of Mr. Pine prior to that date; and further, that without positive proof on the part of the United States, that Pine actually had that balance in his hands on the 2d day of March, 1859, the sureties are not liable for such balance.

In our opinion it is not enough to show that Pine ought to have had that balance in his hands, of money before that time rececived by him of the government, and no account of its being disbursed, for the reason that during the period of time prior to March 2d, 1859, these sureties had nothing to do with Pine, and were not, in the least, responsible for his acts, therefore, no presumptions can make them liable; such presemptions as might make Pine liable can not make these sureties liable. Proof should be made, on the part of the United States, showing the balance in fact to be in his hands, as clearly and positively as in cases of receipt of money from the government after the date of the bond. These principles we hold to be true, and so self evident that it can not be necessary to cite authorities.

United States v. *Nichols*, 12 Wheaton, 509.

If, as in this case (12 Wheaton), the sureties are not liable for money reaching the hands of the officer after the termination of the office, then, upon the same principle, sureties are not liable for money received prior to the commencement of the term, or point of time in which the sureties became liable, without proof that the money was in the marshal's hands at the time of the undertaking by the sureties. The sureties can not be charged by mere presumption of honesty in Pine prior to March 2d, 1359.

The United States must show that its appointee, at the time the sureties became bound, actually had the balance in his hands. Presumption which might bind Pine can not bind the sureties. They are only liable for moneys which he then had, and which he subsequently received from the government, and failed to account for according to law.

If it is true that Pine had used the money prior to March 2d, 1859, for his own purposes, and did not, in fact, have it on hand, then, to hold these sureties for that amount, would make them answer for an unlawful act of Pine committed prior to the delivery of their bond. This, we submit, if the court please, can not be done upon any principle of law or justice.

Bryan v. *United States*, 1 Black., 140.

If we are correct as to the law in this case being sustained, as we think, by the case cited in the 1st Black, then it only remains for us to show, from the record, that the testimony on the part of the government did not prove the balance claimed March 1st, 1859, to be in the hands of Pine on the 2d day of March, the day the bond was delivered to the district judge.

The testimony on the part of the United States, showing money received by Pine, as marshal, will be found commencing on page 16 and ending on page 67 of the record. The statement from the Treasury Department seems to be very much confused, and is very difficult to understand. It contains statements and re-statements of

differences; it shows items of accounts rejected or disallowed, and, afterwards, same items allowed.

It appears, on page 22 of the record, that there was a difference in the account, as claimed by Pine, of $596.14. The auditor attempts to show the items of difference, and on page 25 of record, it appears that the First Auditor, on the 4th day of August, 1859, claims a balance, March 1st, 1859, of $5,539.82, as shown by amended statement on page 21 of record. It is also shown, on p. 25 of record, that the Auditor found that Pine was entitled to certain credits, as there shown, for disbursements of December term, 1858, and March term, 1859, of $2,271.64.

On page 26 of the record, Mr. Medill admits a corrected balance on the 5th day of December, 1859, to be $2,745.17, and re-states the account, bringing into the account the balance of March 1st, 1859, and crediting the expense of December term, 1858, and March and May terms, 1859, which shows the balance as above—$2,745.17.

On page 46 of the record, it appears that the balance stated to be, February 13th, 1859, $3,008.56, and then follows a large amount of suspended accounts, which are shown on pages 47, 48, 49, 50 and 51, and also forfeited items; and August 29th, 1860, certifying balance due from Pine, $4,920.96. (See p. 53.)

On page 55 it is stated that there is a difference of $1,912.40, and then, on pages 55, 55, 57, 58, 59, 60, 61 and 62, the items of difference which the Auditor did not allow. Some of these items had been previously rejected, but much the larger part were in addition to other items rejected, showing a much larger amount claimed by Pine, and never allowed to him in any of the statements.

It will be borne in mind that the same old balance which was reported March 1st, 1859, $5,539.82, has always been charged as an item in the several statements, and the account only varied by

allowances and charges of further drafts vpon the treasury, so that the final balance, as reported by the Auditor ($4,920.96) August 26th, 1860, on page 54, is the balance claimed by the United States.

On page 55, and part of 56, it is shown that of the outstanding differences there are, of the December term, 1858, but $182.83; and on page 57, of the December term, 1858, $29.92, making $212.15, which existed prior to March 2d, 1859, leaving the balance, $1,700.25, items charged by Pine for disbursements after March 2d, 1859, which were never allowed to him by the Auditor. The statement on pages 62, 63, 64, 65, 66, and 67, shows all the drafts received by Pine from the first appointment, and also shows that the accouni, as sued upon, included moneys received both before and after March 2d, 1859. From the statement of the Treasury Department, it appears that Pine has been charged with balance of March 1st, 1859, and the four drafts as stated, $18,777.29, making $24,917.11, which amount the government, by this suit, seek to charge the sureties, less the disbursements allowed to Pine from time to time. From the final balance, as reported, $4,920.96, there must have been allowed and credited to Pine, after March 2d, 1859, $19,396.15, making $618.86 excess of payments by Pine, on the account of the United States, above the amount received by him after March 2d, 1859.

There can be no mistake in these figures, and, therefore, the sureties in this case are entitled to a credit for payments made by Pine after the bond was delivered for the sum of $19,396.15. They are also entitled to be allowed, if correct, the sum of $1,700.25, for disallowed disbursements made by Pine after March 2d, 1859. If it is true that Pine had used all the government money in his hands prior to March 1st, 8159, then we are correct in claiming all payments made by Pine after March 2d, 1859, and also, all charges made for services after that time. It is true, beyond doubt, that Pine used execution money to pay government claims, which execution money, to a large amount, the sureties have paid to the several parties. Therefore, we say, that whatever amount of the debt of the United States paid by Pine after March 2d, 1859, whether

the debt was contracted prior to that date or not, the sureties are entitled to the payment. Suppose, if the court please, it should be admitted that every dollar of the $5,539.82, balance March 1st, 1859, Pine had, before that time, used, to establish the Chicago Herald, a newspaper devoted to the special favor of President Buchanan and Secretary Thompson, and opposed to that great leading mind of Illinois, whose spirit is now at rest, and that Pine had taken money collected on execution after Mrch 2d, 1859, to the amount of that balance, and had, after that date, paid the liabilities of the United States in the discharge of his duties, we ask, if the sureties would not be entitled to the charges due Pine for services rendered and money paid after March 2d, 1858, as a part of the account properly adjustable under the bond? Would it be right to credit to Pine, to be applied on a defalcation prior to March 2d, 1859, money taken from execution creditors and applied in discharge of liabilities of the government?

It is true that the record does not directly show this state of facts, but it is true in this case, as we believe and can fully establish; therefore, we are justifiable in using the supposition to present more clearly our views.

Of the amount $1,700.25 which the Auditor refused to allow, the sum of $1,530.96 was proved and allowed by the court on the trial (see p. 115); which added to the sum of $618.86 makes $2,249.82 more of payments made by Pine after March 2d, 1859, than money received by him from the United States during that period. If it had been fully shown that he used execution money to pay this amount, then it would have been justice to these sureties to have recovered that amount against the United States instead of a judgment against them. But, as the record appears, we say, if the court please, that there should have been a verdict for the defendants in the court below.

On page 16 of the record it appears, that Henry S. Fitch, the district attorney for the United States, stipulated that the papers

and documents found on pages 68 to 109, inclusive, which formed a part of a document, published by authority of one of the departments of the government, might be used as evidence on the trial of this cause. Under the stipulation, and also as a part of a deposition of D. B. Martin, the plaintiffs in error offered the documents and letters in evidence which appear on pages 68 to 112, inclusive. The plaintiffs in error further offered to prove, by the deposition of David B. Martin, that Pine had actually disbursed, and converted to his own use, and paid out on his private account, all the money received by him from the government prior to the 1st day of March, 1859, all of which the court refused to allow the defendants below to show and prove upon the trial, to which ruling defendants' counsel did then except. (See page 109.) The defendants below then offered the documents, letters and deposition of Martin in evidence, which being objected to, the court refused to allow, and counsel then excepted. (See page 109.)

Now, if the court please, we say, that the deposition of Martin, and the documents thereto attached, would have fully proved the fact that Pine did not have in his hands one dollar of government money, which the treasury account shows that he ought to have had, on the 1st day of March, 1859. It would have proved that Pine had, in fact, converted every dollar of the balance to his own private use, and had left unpaid expenses of the circuit and district courts, which he ought to have paid. It would have shown that he was, in fact, a defaulter to the United States for the entire balance claimed March 1st, 1859, and that, showing such to be the fact, the defendants in the court below could not have been charged with one farthing of the balance of $5,539.82. This fact having been shown, the proofs, as made, would have entitled the defendants in the court below to a verdict, as it was shown that there had been, in good faith, money disbursed after March 2d, 1859, to the amount of $618.86 more than Pine had received from the government after that date.

Mr. Martin states in his deposition, on page 72, that he was book-keeper for Mr. Pine from September 8th to February 1st,

1859. He states, in folio 106, that Pine was a defaulter on the 1st day of February, 1859, from five to six thousand dollars. That such defalcation commenced in October, 1868. He says that there were no funds in the marshal's hands at the close of the October term, 1858. He says, at the close of page 72, that on the 1st day of February, 1859, Pine had no government funds on hand. On page 73, folio 108, Mr. Martin says that the government had notice early in February, 1859, of Pine's defalcation, and states how the notice was given, and to whom. On page 78 will be found the charges and specifications which Martin made to Mr. Thompson, the secretary, a copy of which he furnished to the other members of the cabinet, as he states. Pages 74 to 108, inclusive, contain copies of papers and documents which were annexed to the deposition of Mr. Martin, all of which go to show the fact that Pine converted the money in his hands, as marshal, to his own use, and that on the 1st day of February, 1859, he had not a dollar on hand for which these sureties can be charged in this action.

It may seem strange that such facts did actually exist in February, 1859, and that the charges and specifications were made to the department at Washington, and that the parties who became Pine's sureties did not have any knowledge of such facts prior to March 2d, 1857. But, strange as it may seem, none of the sureties had any such knowledge, so far as we are advised. We can answer positively, for one, that nothidg of the kind was known to us. In fact our political relations would not have been very likely to aid us in obtaining the information.

IV.

We have, in the arrangement of our argument under the third point, claimed that the sureties of Pine should have credit for all payments made by him, on account of the government, after March

2d, 1859, without reference to the date when the United States became liable upon the debts or claims paid. This proposition appears to us to be so perfectly plain and reasonable that no argument can be necessary.

If it had been proved, as claimed, that Pine had in fact obtained receipts as payment to the parties, and had used them as vouchers, when, in fact, he had not paid the money, and that after March 2d, 1859, upon receipt of money from the United States, he had used that money in paying the parties who had before that time given him receipts, then, we say, that the sureties would be entitled to have all such payments allowed, for the reason that they were not parties to any such shifting or deception; and the money being actually due the parties to whom paid, there would be a great injustice done the sureties if they were not allowed such payments.

All moneys paid by the marshal to the parties entitled to it, after the bond given, is a proper credit to the sureties. It can not make any difference whether the liability of the government was incurred prior to the delivery of the bond or after. It is the disbursements, the payment of obligation of the United States, which must be credited to the bond account with the sureties. If the money paid was due to the parties, and within the class of claims which the marshal must pay, then the credit is proper. The giving of a receipt prior to getting the money is no obligation, and can not preclude the party of the right to receive the money at any time thereafter.

We now propose to call the attention of the court to the facts attending the payment, or the advance by the United States, of the draft, November 9th, 1859, of $2,500.

On page 111 of the record, will be found the commencement of a correspondence between Thomas Hoyne and Richard J. Hamilton, then two for the sureties on the bond in question, and Secretary Thompson. It seems, from these letters, that in October, 1859,

and some two or three weeks prior to the advance of money, the Secretary was fully advised of a state of facts which ought to have discharged the sureties from all liability for misapplying money so paid to Pine after the receipt of the letter, which was October 25th, 1859. (See p. 113.) We submit, may it please the court, that upon principle and justice, the sureties were not liable for the amount of the draft for $2,500. The secretary might as well have given to Pine ten thousand dollars as any sum and charged it upon the sureties. Such acts prove clearly that a government can do a wrong; at all events its officers may do an act, after notice, which will not bind sureties.

In conclusion, we say, that we claim that the testimony which the defendants below were deprived of the privilege of giving to the jury, would have, if allowed by the court to go to the jury, given them a verdict.

We also claim that, in our opinion, it will be impossible for the court to read the testimony in this case, and the instructions asked by defendant Smith, and say that there was no error in the court in refusing to give the instructions asked. We think the law and the testimony fully show that the instructions asked by defendant Smith were to the point and highly proper, and ought to have been given to the jury.

We also claim that instruction No. 1, asked by all of the defendants upon the trial, was highly proper, and ought to have been given to the jury. The plaintiff, on the trial, made no proof upon the point; in fact all the instructions asked ought to have been given to the jury.

We submit, if the court please, that the instructions given by the court, on page 115, were erroneous, and require no argument to show wherein. It fully appears, from the record, that the court took every question of fact from the jury and directed a verdict for the plaintiffs below.

Respectfully submitted,

E. S. SMITH.

In the Supreme Court of the United States.

No. ~~109~~ 86

DECEMBER TERM, 1864

ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, GEORGE D. KELLOGG, and WILLIAM B. SNOWHOOK, impleaded with CHARLES N. PINE, BENJAMIN F. PINE, and BRECKENRIDGE F. BLACKBURN, plaintiffs in error,

vs.

THE UNITED STATES.

In error to the circuit court of the United States for the northern district of Illinois.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

GOVERNMENT PRINTING OFFICE.

559

In the Supreme Court of the United States.

No. 199.

DECEMBER TERM, 1863.

ISAAC COOK, THOMAS HOYNE, EZEKIEL S. SMITH, IRAM NYE, GEORGE D. KELLOGG, and WILLIAM B. SNOWHOOK, impleaded with CHARLES N. PINE, BENJAMIN F. PINE, and BRECKENRIDGE F. BLACKBURN, plaintiffs in error,

vs.

THE UNITED STATES.

In error to the circuit court of the United States for the northern district of Illinois.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

This is an action of debt, brought by the United States against the parties named, in the circuit court of the United States for the northern district of Illinois, on the official bond of Charles N. Pine, late marshal of the said district, the other defendants named being his sureties therein.

The jury was sworn, and found their verdict upon the issue joined on the pleas of the defendants, Smith, Hoyne, and Snowhook, who are the plaintiffs in error in this court, upon whose exceptions the case is to be heard and decided.

The declaration was on a joint and several bond, executed by the parties, in the penal sum of $20,000, dated the 28th of February, 1859, with this condition: Whereas the President of the United States hath, pursuant to law, appointed the said Charles N. Pine to be marshal of the United States for the northern district of Illinois, to have and to hold the same, &c., for four years from the 15th day of December, 1858, unless sooner removed therefrom, &c.: Now, if the said Charles N. Pine, by himself and his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void, &c.

The breaches assigned were: 1st. That after the making of said writing, &c., he did not faithfully perform, &c., in this, to wit, that there came into his hands, as marshal, $20,000 of the plaintiff, which it was his duty to account for and pay over to plaintiff. Yet he did not, nor would he pay over the same. 2d. That after the making, &c., he did not faithfully perform, &c., in this, that he received and collected a large sum of money of the plaintiff, as the fees and emoluments of said office, over and above the compensation allowed him by the statute, &c., to wit, $20,000, which it was his duty to pay over and account for. Yet he did not, nor would he pay the same, &c.

The defendants Hoyne and Snowhook pleaded:

1st. That said bond was "not their deed."

2d. Having craved oyer of the condition, and it having been read to them, they say the marshal, after the making of said writing, &c., did faithfully perform, &c.

3d. That after the making of said writing, &c., the marshal did account for and pay over all moneys of plaintiff received as marshal, and all moneys received as marshal, as fees and emoluments of his office, over and above the compensation allowed him, &c.

Which plaintiff, by replication, denied.

The defendant Smith pleaded:

1st. That he did not owe plaintiff the said sum, &c.

2d. That the said bond was "not his act or deed."

The jury found that the bond was the act and deed of the defendants, and assessed the damages at $3,796 80, for which sum the court entered judgment.

EVIDENCE AS TO ERASURE ON THE BOND.

The defendants objected to the admission of the bond in evidence, on the ground that there was an erasure and alteration thereon, which it was the duty of the plaintiff to explain. The plaintiff then called Judge Drummond, who had approved the bond, who testified that when it was brought to him for approval it was precisely as at the trial, except the names of the sureties were inserted by him in the first part of it; that it was brought either by J. W. McGill or defendant C. N. Pine, and the erasure of Philip A. Hoyne's name was there just as it appeared at the trial; that Pine had difficulty in getting sureties, and he had some time before told witness that Hoyne had objections to having his name on the bond, and Hoyne afterwards

told him he did not want his name on the bond. Witness had not then seen it. Afterwards it was brought to him with Hoyne's name erased. Not knowing the signatures of all the parties, he held the bond several days, and all the sureties came in and acknowledged the execution of it before him, except the defendant Smith. He then approved the bond, and being personally acquainted with Smith's signature, certified it as indorsed on the bond. (Record, page 15.)

The bond was then admitted in evidence, under objection by the defendants, and this constitutes the first exception and error assigned.

At a subsequent stage of the trial the defendant Smith called Judge Drummond as a witness, when he testified that some time before the approval of the bond by him, Philip A. Hoyne stated to him that he had signed the bond, with others, for Pine, and that he had become dissatisfied, and that McGill and Pine had both agreed that his name should be taken off, and that he wanted it off, and was not willing it should remain on the bond. Witness further said that when the sureties who acknowledged the execution of the bond appeared before him, he might have called their attention to the erasure of the name of P. A. Hoyne, but was not positive; was inclined to think he did; thought he handed it to each one of them, and asked them if they signed it; didn't know that they read it. (Record, page 110.)

Defendants also called Philip A. Hoyne, who testified that he signed the bond, with others; soon after, and before its approval, he became dissatisfied and requested McGill and Pine that his neam be erased, and they promised to do it. Not being able to get the bond to do it, he told Judge Drummond that he had signed it, and wanted his name erased, &c. Judge Drummond told him that in justice to the other signers he should tell them he wanted his name off. Accordingly, in a very short time, witness spoke to all the parties who had signed, except Smith, who was absent, and told them he wanted his name off, &c. A few days after, in response to his inquiry, Judge Drummond told him his name had been erased. When it was done, and by whom, he did not know.

This testimony was admitted under objection, "subject to the question of its competency." (Record, page 111.)

EVIDENCE OF MARSHAL PINE'S INDEBTEDNESS.

The plaintiff gave in evidence certain treasury transcripts, embracing Nos. 9712, 10190, 11036, 11615, 12093 and 12675, as

reported by the First Auditor and certified by the First Comptroller, (Record, pp. 16 to 62,) exhibiting the official settlement of the accounts of Marshal Pine; and also certain treasury warrants and drafts in favor of said Pine. (Record, pp. 62 to 67.)

Pine was first appointed marshal in September, 1858, and entered upon the office at that time. He was subsequently confirmed by the Senate, and a new commission was issued to him, dated 15th December, 1858. It was after the receipt of this commission that he and his sureties executed the bond in suit, dated 28th February, 1859; approved 2d March, 1859.

The treasury transcripts No. 9712, (showing adjustment of accounts by Auditor on 16th December, 1858, and balance certified by Comptroller on 1st January, 1859,) and No. 10190, (showing Auditor's adjustment on 1st March, 1859, and balance certified by Comptroller on 30th March, 1859, exhibit the state of his accounts, as settled, during the time he was in office prior to the date of the bond in suit. The balance certified against him on the second of the above-named transcripts (No. 10190) was $5,539 82. (Record, p. 21.) This account had been rendered by Pine on the 27th January, 1859. (Record, p. 25.)

His next account was rendered on the 18th of March, 1859. (Record, p. 34.) But that account and the account of 10th June, 1859, (Record, p. 35,) were adjusted together by the Auditor, on the 4th August, 1859, and certified by the Comptroller 5th December, 1859, showing a balance against him of $2,745 17. The accounts being thus run together, it is more difficult to ascertain whether any of that balance was in his hands on the 2d of March, 1859, when the bond in suit was approved.

But the accounts show that he applied all the money received by him prior to the date of the bond in payment of lawful and proper expenses incurred before that time, and that the default for which this suit is brought, occurred with the money received by him after that date. This appears by the following statement taken from the transcripts in evidence:

Before the 2d of March, 1859, he received the following sums:

Treasurer's draft, 23d September, 1858	$3,740 00
Treasurer's draft, 30th September, 1858	8,000 00
In all	11,740 00

(Record, pp. 62, 63.)

Up to the 2d of March, 1859, he is credited by the accounting officers as follows:

His compensation at July term, 1858	$154 50
His disbursements	1,280 13
His commissions	25 60
Credits for July term, 1858	1,460 23
(Record, page 19.)	
His compensation, October term, 1858	$861 90
His disbursements	3,802 01
His commissions	76 04
	4,739 95
(Record, pp. 21, 22.)	
For December term, 1858, the marshal claims for his expenses	$6,562 88
(Record, pp. 33, 34.)	
Deduct from this amount disallowed on settlement by officers of treasury for same term	398 54
His allowed expenses of December term, 1858	6,164 34

The allowed credits of the marshal up to the approval of his bond, 2d March, 1859, may, then, be stated thus:

At July term, 1858	$1,460 23
At October term, 1858	4,739 95
At December term, 1858	6,164 34
Whole amount of allowed credits	12,364 52

From which sum of $12,364 52 deduct the amount drawn by Marshal Pine prior to the date of his bond of 28th February, 1859, as above stated, viz: $11,740 and it leaves to the credit of Pine a balance of $624 52.

So that when that bond was executed, Pine, so far from being in default to the United States, was its creditor. *The default for which he is now sued occurred, therefore, out of moneys received after that bond was given.*

The first money so received was transmitted to him by Treasurer's draft of 5th April, 1859, for	$7,219 20
(Record, p. 64.)	

He afterwards received—

Draft 28th June, 1859, for	$1,658 09
Draft 5th August, 1859, for	7,400 00
Draft 9th November, 1859, for	2,500 00
Whole amount received after 2d March, 1859.	18,777 29

(Record, pp. 64, 67)

DEFENDANTS OFFER TO PROVE MARSHAL'S DEFAULT OCCURRED PRIOR TO THE EXECUTION OF THEIR BOND.

The defendants having shown by the records of the circuit court that that court had, on the 5th of March, 1859, made an order for the payment of the grand and petit jurors in attendance at that term, viz., December term, 1858, up to and including March 5, 1859, (Record, pp. 68, 70,) and having further "introduced in evidence" portions of executive document No. 53, 1st session 36th Congress, page 32, showing the Auditor's statement of Marshal Pine's account for October term, 1858, (sworn to by the marshal 27th January, 1859, and adjusted by the Auditor 1st March, 1859,) showing a balance due from him to the United States of $5,539 82, offered in evidence the deposition of David B. Martin, (Record, pp. 71, 73,) for the purpose of proving "that on or about the 1st day of February, A. D. 1859, the late Marshal Pine had actually converted to his own use, and paid out on his own private account, all the moneys which he had before that time received from the government in the course of his duties as marshal, prior to that time; that he had not then paid the expenses or made the disbursement for the previous December term of the United States circuit and district courts for the northern district of Illinois, referred to in the treasury transcripts given in evidence in this cause, and that he received no further sum or sums of money from the government, from the 1st day of February, A. D. 1859, until the execution of the bond given in evidence." (Record, p. 109.)

The court rejected the evidence, and that rejection is the ground of the 2d, 3d, and 4th errors assigned.

The defendants then proposed to prove that in respect to the vouchers transmitted to the government by Marshal Pine, on the 26th of March, 1859, for the expenses of the previous December term of the court, those vouchers were in fact given by Marshal

Pine without actual payment of the moneys they represented, but that such moneys were, in fact, paid out of moneys received by him from the government after the date of the bond in suit. (Record, pp. 109, 110.)

But the court, on objection made, refused to receive the evidence, which is the ground of the 5th error assigned.

The defendants further proposed to prove that at and before the time the government advanced to Marshal Pine the said $2,500, (draft of 9th November, 1859,) the said plaintiff already had notice that he was a defaulter to a large amount; for which purpose they offered a letter of two of the sureties in the bond to the Secretary of the Interior, of 19th October, 1859, and his reply of 25th October, 1859. (Record, pp. 111, 113.)

But the court, on objection made, rejected the evidence, which rejection is the ground of the 6th error assigned.

INSTRUCTIONS ASKED BY DEFENDANTS AND REFUSED.

The defendant Smith asked the court to give to the jury certain instructions, six in number, relative to the erasure of the name of Philip A. Hoyne from the bond in suit, to the effect, that as Hoyne's name was erased without the knowledge or consent of Smith, who was absent at the time, that erasure discharged Smith from all liability; which instructions the court refused to give, (Record, pp. 113, 114,) and that refusal is the ground of the six errors assigned by Smith.

The three defendants asked the court to instruct the jury to the effect that before it could recover for money received by Marshal Pine prior to the execution of the bond, the plaintiff was bound to show that such money was in his hands when the bond was executed; that the sureties could only be held liable for the faithful application of moneys received after its execution; that the jury should credit them with all money paid by Pine for plaintiff after the execution of the bond, whether paid before or after the receipt of the money from plaintiff, provided it was paid in regular course of his duty as marshal, and such as he was required by law to pay for plaintiff; that plaintiff was bound to prove the amount of money received by Pine after the 2d of March, 1859; and if the jury believed that Pine properly paid out for the plaintiff, after the 2d of March, 1859, as much

money as he had received from the plaintiff after that date, then they should find for the defendants. (Record, p. 114.)

But the court refused to give these instructions, but instructed the jury that the treasury transcript which had been offered in evidence by plaintiff was made by law competent evidence, *prima facie*, of the amount due from Pine as marshal; and there being no evidence contradicting such transcript, the jury should find for plaintiff the amount shown due thereby, less such items as had been disallowed by the court. (Record, pp. 114, 115.)

The refusal to give the instructions asked for, and the giving of the instructions above stated, constitute the ground of the 7th, 8th, 9th, 10th, and 11th errors assigned by the three defendants. (Record, p. 119.)

Before signing the bill of exceptions, Judge Drummond states, inasmuch as all the evidence is not set forth, that the defence conceded, on the trial, that the signatures to the bond were genuine, and that the money stated in the transcript was all duly received by Marshal Pine; but the defence was placed solely on the following grounds:

1st. That there was an erasure of the name of Philip A. Hoyne apparent on the bond.

2d. That Smith was not liable on the bond, in consequence of such erasure, under the circumstances stated.

3d. On the supposed defences contained in the evidence rejected.

ARGUMENT.

I.—Effect of erasure of Hoyne's name from bond on the liability of Smith.

1st. The first assignment of error by the three defendants, on the admission of the bond in evidence, and the six assignments of error by the defendant Smith, on the refusal to give the six instructions prayed for by him, as to the erasure of Philip A. Hoyne's name from the bond, present but a single question, viz:

Was the erasure of the name of Hoyne from the bond as one of the sureties, after Smith had signed it, without the knowledge or consent of Smith, and before the approval of the bond, sufficient to discharge him from liability, under his plea of *non est factum?*

Philip A. Hoyne testifies that having signed the bond, and before its approval, being dissatisfied, he requested of Pine and McGill, (Pine's deputy,) that his name be erased, and they promised to do it. Judge Drummond testifies that when the bond was brought to him for approval, it was precisely as at the trial, except that the names of the sureties were inserted by him in the first part of it; that it was brought either by McGill or Pine, and the erasure of Philip A. Hoyne's name was there just as it appeared at the trial.

The erasure of Hoyne's name, of which Smith now seeks to avail himself, was therefore made, not only before the delivery of the bond to the plaintiff, but before the essential preliminary to its execution of approval by the United States district judge; and it was evidently made by Marshal Pine himself, or at his instance, and before the plaintiff had any connection with it. It was certainly not made by or at the instance of the plaintiff.

The act of 24th September, 1789, sec. 27, (1 Stat. at Large, 87,) provides that "before" the marshal "enters on the duties of his office, he shall become bound for the faithful performance of the same by himself and his deputies, before the judge of the district court of the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of $20,000."

This explicit direction that the marshal shall "become bound" before the judge of the district court, with "sureties to be approved by the district judge," shows clearly enough that the bond is in no manner executed until it is brought to the judge and approved by him. That approval is quite as essential to its valid execution as is the acknowledgment made in court, to a valid recognizance. Before it is given, the signatures do not bind the sureties, for one important element to a good contract is wanting, viz: the agreement of the United States to accept them, that agreement being, by the law, expressed by the judicial approval.

When, therefore, Hoyne's name was stricken off the bond, the erasure left him, as to the obligation which the sureties were about to assume, precisely where he would have stood if he had only promised to sign it, and had not done so. And surely, if, having promised to sign it he had never done so, it could not be pretended that his failure to sign would discharge the sureties who had signed and been approved, even though he and they had previously agreed that unless all signed none should be bound, unless, indeed, the United

States had been a party to that agreement. Such an agreement might bind all the sureties who made it, but could not affect the obligee who was not a party to it, nor furnish any of them with a good defence to the bond, whatever right of action, in the event of loss, it might give to the sureties who signed, against one who did not sign. If, then, the erasure of Hoyne's name before approval, and without the connivance of the United States, no more affected the obligation of the other sureties than his failure to keep a verbal promise to sign would have done, it follows that it cannot relieve Smith from the bond. And this result follows, if Smith, when his name was approved, had no knowledge of the erasure, as it would follow if he had had a special agreement with Hoyne that one was not to sign without the other.

But even if the erasure be treated as a material alteration of the bond, after it was so far executed as to bind the signers, still, if it was made by or at the instance of Marshal Pine, without the knowledge or consent of the United States, it does not discharge Smith from liability. In such case the alteration must have been made by or with the knowledge or consent of the obligee. And however, in the absence of evidence, that knowledge or consent might be inferred, where the bond had been delivered and was in his possession, in a case like this, where the alteration was made before it was delivered or came into possession of the United States, the knowledge or consent of the obligee to the alteration must be affirmatively proved by he party alleging and availing himself of it. To this effect is United States *vs.* Linn *et. al.*, (1 How., 104,) an action on Linn's official bond. Duncan, a surety, pleaded as special matter in bar, that he had signed and delivered it to Linn to be transmitted to plaintiff, and *after* the sureties had been approved by the district judge, it was, without the consent or authority of Duncan, materially altered, in this, that scrawls by way of seals, were affixed to the signatures of Duncan and the other signers, whereby the instrument was materially changed and vitiated, &c. In considering this plea the court said: "The plea does not indicate in any manner by whom the alteration was made. It does not allege that it was done with the knowledge or by the authority or direction of the plaintiff, nor does it even deny that it was done with the knowledge of the defendant Duncan. The plea does not contain any allegation inconsistent with the conclusion *that it was altered by a stranger, without the knowledge or consent of the plaintiff, and if so, it would not have affected the validity of*

the instrument." "The demurrer admits nothing more than that the seals were affixed after the instrument had been signed by the parties and delivered to Linn to be transmitted to the plaintiff, and that this was done without the consent, direction, or authority of him, the said Joseph Duncan. Is this enough to avoid the instrument and bar the recovery? It certainly is not, *for the seals might have been affixed by a stranger without the knowledge or authority of the plaintiff, and would not have affected the validity of the instrument*." (Thompson, justice, page 110. See also Selser *vs.* Brock, 3 Ohio St., 307. 5 Ibid., 256.)

If this principle be true of an alteration made *after* the bond is judicially approved, it certainly is true where the alteration is made by the principal co-obligor *before* the judicial approval, which, as we have seen, is the legal method of expressing the consent of the United States to the contract, and before which the obligation involved in signing does not begin.

But it is well settled by authority, that even where the face of a joint and several bond shows that it was intended to have been executed by others, in addition to those whose names are appended to it, and those others have not united in signing it, still, it is the valid and binding deed of those who do sign, unless they show an express reservation or condition at the time, that it was not to be binding on them without being also executed by the others.

The cases to this point are full and explicit.

Cutler *vs.* Whitmore, 10 Mass., 442, was debt against A on bond, written as if signed by A, B, and C, jointly and severally, but was signed and sealed by A and B only, with condition that A, B, and C should pay the obligee such sums as certain arbitrators should award against them. The arbitrators awarded that A and B should pay the obligee a certain sum. *Held*, in action against A, that the award was good, and that he was liable on the bond for the amount awarded. The court said: "The bond declared on is written as if to be executed by three, as joint and several obligors, but it is executed by only two of them. It is, nevertheless, a valid bond and effectual against the two by whom it was executed. If there had been any agreement or condition at the time, that it should not be delivered as their deed, unless the third person named as obligee should also execute it, this would show that it was only delivered as an escrow; and the defendant might have proved that fact under the plea of *non*

est factum. But there is no such plea in this case, nor any suggestion of that kind, and we must take it on these pleadings that the due execution of the bond is admitted."

In Haskins *et al. vs.* Lombard, 16 Maine, (4 Shep.,) 140, it was held that if the obligor in a bond, so written that it appears to have been contemplated by the parties that it should be signed by several, sign and seal the paper, and at the same time annex a reservation or condition to his act that it shall not be binding upon him unless signed by the other obligors named, he will not be bound by it unless they also sign as obligors. But if the bond be signed or delivered without any condition or reservation annexed, *although under an expectation that it would be signed by the others*, it is his deed, and will be binding on him though the others do not sign it.

Blume *vs.* Bowman *et al.*, 2 North Car. (Iredell's Law) Rep., 338, was an action on a joint and several bond, with the names of nine obligors inserted—two principals and seven sureties—of whom but six sureties signed. It was proved that Martin, the surety who did not sign, wrote his own name in the body of the bond. The defence was that the writing was sealed by defendants, *and delivered to one of the obligor principals as an escrow*, and was not intended to be delivered to plaintiff as their deed unless Martin also signed. The court held that "a bond cannot be delivered to the obligee as an escrow, for such a delivery would make it absolute in law; but it may be delivered by sureties to principal obligors as an escrow, (4 Cr., 219; 1 Touchstone, 58, 59;) that there was no evidence that defendants would or would not have sealed if Martin's name had not been in the writing. They all did seal, without either of them making a declaration that it was done upon the condition Martin should seal. * * The name of Martin being inserted in the body of the writing, before the defendants executed it, *per se*, is no evidence that the defendants did execute it on condition that Martin should also execute it. We must, therefore, say that there was *no* evidence in the case upon which the court would properly leave the jury at liberty to say that the bond was delivered as an escrow."

In Keyser *vs.* Keen, 17 Penna., (5 Har.,) 327, a joint and several bond was drawn for six to sign as sureties; but only five signed. Keyser, one of the sureties, being sued, made these points: that a bond containing two or more names as sureties, but unsigned by some of them, is not binding on those who do sign, unless it be shown that they dispensed with the execution by the others; that the

obligee must see that all sign who are named in such a bond, and if any one will not sign, the obligee must inform the rest, and his neglect to do so is bad faith, and will defeat a recovery; that the presence of the name of each obligor in the bond is equivalent to a stipulation that he must be bound with the rest, and that any alteration, by which the responsibility of a surety is increased without his consent, invalidates the bond; and the absence of the signature of a surety, whose name is in the body of the bond, is such alteration, and it must be shown defendant consented to it. The judge at *nisi prius* overruled all these points, and held that though a bond be written as if to be executed by two or more joint and several obligors, but is executed by part only, yet it is valid against those who executed it, which ruling was affirmed by the Supreme Court. The same principle is recognized in 5 B. & A., 440; 2 Bos. & Pul., 338; 1 Harrison, 453; 12 Mass., 137; 5 Greenl., 336; 10 Ohio, 445, 451; 6 Ala., 248; 8 Watts, 226.

In Pawling *et al. vs.* United States, 4 Cranch, 219, where the sureties in an official bond *proved expressly* that they signed on condition that others should sign, who did not sign, this court held that it was evidence for a jury to infer a delivery as an escrow. It is quite evident that without proof of that condition they would have been held bound.

There is no evidence whatever in this case that Smith, or any of the signers of Marshal Pine's bond, made any condition when signing as to what persons, or what number of persons, should unite with them. Indeed, it is quite evident not only that there was no agreement or condition made by any of them on signing, but that each signed independently of the others, and without knowing, except so far as they had signed, who their co-sureties were to be. For Philip A. Hoyne testifies that he "signed the bond with others, which was *circulated for signatures* by J. W. McGill;" and Judge Drummond testifies that when he approved the bond he inserted the names of the sureties in the first part of it. So that when the sureties signed, they must have done so without knowing who were to be their co-sureties, and, of course, without any agreement as to who or how many were to sign. The case, therefore, is not as strong as the cases cited, where the signing sureties might have been misled by the insertion of the names of those who did not sign in the body of the bond.

To relieve the defendant Smith under these circumstances would enable the obligors, in an official bond like this, to practice an easy fraud upon the government. For it would only be necessary for those who sign such a bond to make a collusive arrangement with some one who did not sign, and, when sued on the bond, prove that arrangement in discharge of themselves. Nothing would be easier, as the government is neither a party to it, nor informed of it when the bond is approved and delivered.

2d. But even if this defence were valid, the defendant Smith was precluded from making it, because his plea of *non est factum* is not verified by affidavit, as, in cases of this kind, the practice in Illinois, adopted by the United States courts in that district, requires.

The 12th section of the Illinois act of 29th January, 1827, "concerning practice in courts of law," provided that "no person shall be permitted to deny on trial the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence, or set off, unless the person so denying the same shall, if defendant, verify his plea by affidavit; and if plaintiff, shall file his or her affidavit, denying the execution of such instrument." This provision is re-enacted by act of 3d March, 1845. (Purple's Stat. Illinois, 821.)

The construction given this statute by the supreme court of Illinois is, that "the legislature did not intend to change the rules of pleading, as respects this plea" of *non est factum*, "but to dispense with a rule of evidence that was oppressive. If a party, when he files his plea, does not verify it by affidavit, he may, notwithstanding the omission, rely on any legal defence under his plea that he could have done at common law, *except merely denying or disproving the execution of the writing declared on.*" (Longley *vs.* Norvall, 1 Scam., 389; Stevenson *vs.* Farnsworth, 2 Gill., 715.)

Did, then, the defence in question amount to more than a denial of the *execution* of the bond by Smith? If it did, the defence was admissible, (for whatever it was worth,) under the plea without affidavit, just as at common law he might have proved, under the same plea, that the deed was delivered when he was an infant, or a lunatic, or intoxicated, or that it became void *after* it was made and before the commencement of the action, by erasure, alteration or addition, or the like, (1 Chit. Pl., 483;) in all of which cases the *fact* of *execution* is not denied, but is avoided by other facts which relieve the party from the obligation ordinarily attaching to the act.

Smith's defence simply amounted to a denial that he had executed the bond. He did not deny that he had *signed it*. But the execution of a deed implies more than signing. Delivery also is essential to the execution. Now he denied that his signature was valid when the bond was delivered to the plaintiff, by reason of the prior erasure of Hoyne's name. In other words, he denied that it was *delivered* as his deed. If not delivered as his deed, of course it was not executed by him. His defence, therefore, denied the execution of the bond by him, and involved nothing else. If he had alleged that the erasure occurred *after* the delivery to the plaintiff, it would have been an admissible defence under the plea of *non est factum* at common law, and, under the Illinois statute, it need not have been verified by affidavit, for it would have involved more than a denial of the execution of the bond.

Under that statute, therefore, and the construction given to it, this defence was strictly a denial of the execution of the bond, and nothing more, and hence was not admissible under *non est factum*, without affidavit.

II.—MARSHAL PINE'S DEFAULT OCCURRED AFTER THE EXECUTION OF THE BOND IN SUIT.

The second, third, fourth, and fifth assignments of error by the three defendants, on the refusal to admit the evidence offered, and the seventh, eighth, ninth, and tenth assignments of error by the three defendants, for the refusal to give the instructions prayed for, may be considered together, as they involve the same question.

We have seen that prior to the date of the bond in suit, February 28, 1859, and its approval, March 2, 1859, Pine had received from the United States $11,740. We have also seen, by the official settlement of his accounts for the July, October, and December terms of the United States courts of his district, for the year 1858, that at the time the bond in suit was executed, he had lawfully paid out $12,364 52, so that *by the official settlements*, the United States owed him, as marshal, when that bond was executed, the sum of $624 52. He received no more money from the United States until the 5th of April, 1859, when the Treasurer remitted him $7,219 20, more than a month after the date of the bond, and more than two weeks after he had transmitted his accounts for December term, 1858, embracing the vouchers hereafter referred to. He received in all, after the bond in suit was executed, the sum of $18,777 29. Out of that sum, therefore, he has retained

the money found due the United States on his final settlement, and now sought to be recovered in this action.

But the defendants alleged, and proposed to prove, that Pine had converted to his own use a portion of the money which he had received prior to the execution of the bond, and had not in fact made the disbursements at the previous December term, 1858, of the United States courts, as set forth in the treasury transcripts; that the vouchers transmitted by him with his account of 16th March, 1859, for the disbursements of the previous December term, were in fact given without actual payment of the money they represented, but that the amount the said vouchers represented was afterwards paid to the persons who had given them, out of money received by him as marshal, from the United States, *after* the bond in suit was executed; and, *therefore*, the defendants contended that they were entitled, in this suit, to a credit for the money which the marshal so received after their bond was given, and so applied in payment of the amount represented by the vouchers. In other words, they denied the right of the United States to charge them with money which the marshal, receiving after they were answerable for him, had used to pay what he owed before they were answerable for him.

But, conceding all the facts alleged, the answer to this position is plain and conclusive. When the marshal obtained the vouchers for the disbursements of December term, 1858, the United States was relieved from the claims of the persons who gave those vouchers. The debt of the United States was paid when they gave them. And if, instead of receiving the money to which they were entitled, they chose to substitute the personal credit of the marshal therefor, the United States is, nevertheless, as completely discharged from liability to them as if they had received its money; and the United States being so relieved of liability to the persons who gave the vouchers, of course the marshal was entitled to have credit in the settlement of his accounts at the treasury, just as if he had paid the money to those persons. The vouchers which relieved the United States from the claim of the persons who gave them, also relieved the marshal from the claim of the United States *pro tanto*. When he received and filed those vouchers, and obtained credit for them on settlement, he had as complete a defence to all claim of the government on him for the amount they represented as if he had paid it in gold. He was not, therefore, a defaulter to the government for that amount when the bond in suit was given.

If, then, he used any part of the money transmitted to him, after the bond in suit was given, to pay the persons from whom he had obtained the vouchers before filed and passed, he was simply using it to pay his private debts, and not to pay the debts of the United States. The government derived no benefit from it whatever. It was quite as much a misapplication of the money in his official hands as if applied to any other private debt, and his sureties are just as liable for it as they would be in that case.

The treasury transcripts were, by well-settled law, *prima facie* evidence of the facts and results therein stated. By those transcripts the marshal was shown to be credited with the amount which the vouchers represented. The defendants proposed, by the rejected evidence, to show that the money they represented had not in fact been paid. But even if they had shown that fact, it would not have availed to prove the marshal a defaulter to the government, unless they had also proved that the government was still liable to the persons who gave the vouchers. That was not attempted to be proved, and the fact was contrary thereto. The proposed evidence was, therefore, utterly powerless to contradict the facts and results which the treasury transcripts establish.

The marshal's sureties were not asked to answer for any default occurring before their bond was given; for at the date of the bond he owed the United States nothing, but was its creditor. It was not, therefore, a question whether the money he received after the bond was given was applied to pay a prior default, but a question whether that money was misapplied by him to pay his private debts, with which the United States had nothing to do. We submit that, in rejecting the evidence and refusing the instructions proposed, the court answered that question correctly.

III.—EFFECT OF NOTICE TO SECRETARY OF INTERIOR OF THE MARSHAL'S DEFAULT.

The sixth error assigned by the three defendants is on the rejection of the evidence offered to prove notice to the Secretary of the Interior, by letter of 19th October, 1859, that Pine was a defaulter prior to the last remittance to him of $2,500.

This exception rests upon the assumption that when the Secretary of the Interior was informed that the marshal was in default, he was bound to withhold from him the public money, until he furnished a new bond, or until a new marshal was appointed and qualified.

But one of the chief purposes of requiring sureties from disbursing officers is to protect the government from the necessity of withholding public moneys from its disbursing officers, or removing them to guard against loss. By taking adequate security for their fidelity it is relieved of the necessity of watching every remittance and expenditure, if, indeed, that were possible. For the settlement of accounts can only be at regular and fixed periods, and according to systematic methods; and since they deal with current receipts and expenditures, which overlap the periods of settlement, it is often impossible to tell whether the disbursing officer is in default or not until his final account is settled. It is, therefore, in general only by that settlement that the government can be informed of the default. But it would be intolerable if the government, on the representation of every frightened surety, were compelled to arrest the public business by withholding the money necessary to its prosecution, or by changing its officers. No such duty on its part is involved in the contract it makes with sureties in official bonds; nor can the surety avail himself of the fact that the accounting officers have neglected to settle the accounts of the principal within the periods fixed by law, for laches is not imputable to the government.

These principles were fully recognized and affirmed by this court in United States *vs.* Kirkpatrick, 9 Wh., 720; United States *vs.* Vanzandt, 11 Wh., 184; Dox *vs.* Postmaster General, 1 Pet., 317; Smith *vs.* United States, 5 Pet., 291; United States *vs.* Boyd, 15 Pet., 208.

The evidence was therefore properly rejected.

IV.—NO CONTROVERTED FACTS FOR THE JURY.

The eleventh and last assignment of error, that the court erred in instructing the jury in positive terms, taking away their right to pass upon the evidence, is answered in what has already been said. If the court was right, 1st, in admitting the bond in evidence as against Smith, and holding him liable thereon; 2d, in rejecting the evidence offered; and 3d, in giving the instructions before considered, there was nothing left for the jury to do but to find the verdict, as stated.

The judgment of the circuit court, on the whole case, should therefore be affirmed.

For the U. S.

~~EDWARD BATES,~~

~~Attorney General.~~

TITIAN J. COFFEY.